

No. 10984

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
KINNER MOTORS, INC.,
Respondent.

Transcript of Record

Upon Petition for Enforcement of an Order of the
National Labor Relations Board.

FILED

MAY 9 - 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1-A

United States of America
Before the National Labor Relations Board
21st Region

Case No. 21 C 2389

Date Filed 3/2/44

In the Matter of—

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Kinner Motors, Inc. at 635 W. Colorado, Glendale, California, employing 400 workers in manufacture of aircraft motors has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) (3) and (4) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agents and employees, terminated the employment of the following tool room employees:

Richard Swope.....February 19, 1944
Lewis Gilpin.....February 24, 1944
F. M. Davis.....February 24, 1944

because of their membership in, and activities on behalf of, the International Association of Ma-

chinists, a labor organization, and because they gave testimony under the Act in the matter of Kinner Motors, Inc., Case No. 21-C-2307, and at all times since said dates it has refused and does now refuse to employ the above-named employees, in violation of Section 8, subsections (3) and (4) of said Act.

By the acts set forth in the paragraph above, and by other acts and statements, the company, by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subsection (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIA-
TION OF MACHINISTS,
AFL

By E. R. WHITE
E. R. White,

Grand Lodge Repre., 421 Van Nuys Bldg., Los
Angeles, Calif. Phone: VA-6585.

Subscribed and sworn to before me this 2 day
of March, 1944. At Los Angeles, California.

HELEN W. ELLIS

Helen W. Ellis,

Designated Agent 21st Region, NLRB.

BOARD'S EXHIBIT No. 1-B

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. 21-C-2389

in the Matter of

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, AFL

COMPLAINT

It having been charged by the International Association of Machinists, AFL, hereinafter called the Union, that Kinner Motors, Inc., hereinafter called the Respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the

Twenty-first Region designated as said agent for the Board by its Rules and Regulations, Series 3, hereby issues its Complaint and alleges the following:

I.

Respondent is, and at all times herein alleged, has been, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business at 635 West Colorado Boulevard, Glendale, California, where it is engaged in the manufacture of aircraft engine parts and the assembly of aircraft engines.

II.

Respondent, in the course and conduct of its business, as set forth in paragraph I above, causes and has continuously caused large quantities of materials to be purchased and transported in interstate commerce from and through states of the United States other than the State of California to its plants in the State of California, and causes and has continuously caused large quantities of products manufactured at its plants to be sold and transported in interstate commerce into and through states of the United States other than the State of California; more particularly, Respondent did, during the calendar year 1943, in the course and conduct of its business as aforesaid, purchase raw materials valued at more than \$7,000,000, of which amount materials valued at more than \$3,000,000, were transported to the Respondent's plant from points outside California; further, Respondent

during the same period sold and distributed finished products valued at more than \$3,000,000, of which amount finished products valued at more than \$500,000 were made for delivery, and were delivered, by Respondent, to points and persons outside the State of California.

III.

International Association of Machinists, AFL, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

IV.

Respondent while engaged at its place of business at Glendale, as described in paragraphs I and II above, did discharge the following named employees on or about the dates shown opposite each name:

Richard Swope.....February 19, 1944

Lewis Gilpin.....February 24, 1944

James M. Davis.....February 24, 1944

because of their membership in and/or activity on behalf of the Union; and the Respondent failed and refused to reinstate and employ said persons, and has continued in its failure and refusal to employ said persons, since said dates of discharge. Respondent, by its acts and each of them as herein set forth, did discriminate in regard to the hire and tenure of employment of the aforesaid employees and did discourage and is discouraging membership in the Union, and has engaged and is engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

V.

Further, and without limitation or exclusion of any of the matters set forth in paragraph IV above, Respondent discharged the said James M. Davis on or about February 24, 1944, because he gave testimony under the Act in connection with proceedings had before the National Labor Relations Board in the matter of Kinner Motors, Inc. and International Association of Machinists, Lodge No. 94, for and on behalf of Lodge No. 311, AFL, known as Case No. 21-C-2307, and Respondent has failed and refused to reinstate the said James M. Davis and has continued in its failure and refusal since the date of said discharge; that by these acts and each of them as herein set forth, Respondent did discriminate against the said James M. Davis, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (4) of the Act.

VI.

Respondent, by its acts and each of them as set forth in paragraphs IV and V above, did interfere with, restrain and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

VII.

The aforesaid acts of Respondent, as set forth and described in paragraphs IV, V, and VI above,

constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (3), and (4) and Section 2, subsections (6) and (7) of the Act.

VIII.

The aforesaid acts of Respondent as set forth in paragraphs IV, V, and VI above, occurring in connection with the operations of Respondent as described in paragraphs I and II above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several states of the United States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the National Labor Relations Board on the 11th day of May, 1944, issues its Complaint against Kinner Motors, Inc., Respondent herein.

[Seal]

ELWYN J. EAGEN

Elwyn J. Eagen,

Regional Director National Labor Relations Board,
Twenty-first Region, 111 West Seventh Street,
Los Angeles, California.

BOARD'S EXHIBIT NO. 1-C

United States of America
Before the National Labor Relations Board
Twenty-first Region
Case No. 21-C-2389

In the Matter of—

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, AFL

NOTICE OF HEARING

Please Take Notice that on the 29th day of May, 1944, at 10:00 A.M. on the Ninth Floor, Board of Trade Building, 111 West Seventh Street, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the 21st Region, with offices at 111 West Seventh Street, Los Angeles, California, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 11th day of May, 1944.

[Seal]

ELWYN J. EAGEN

Elwyn J. Eagen,

Regional Director National
Labor Relations Board.

BOARD'S EXHIBIT NO. 1-H

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. 21-C-2389

In the Matter of

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, AFL

ANSWER OF KINNER MOTORS, INC.

Comes Now, Kinner Motors, Inc., in answer to

the charge of the International Association of Machinists, AFL and to the complaint of the National Labor Relations Board and denies and alleges as follows:

I.

Denies generally and specifically all of the allegations contained in the charge of the International Association of Machinists, AFL filed March 2, 1944.

Answering the Complaint on file Respondent denies and alleges as follows:

I.

Admits all of the allegations of Paragraph I.

II.

Admits all of the allegations of Paragraph II.

III.

Admits all of the allegations of Paragraph III.

IV.

Answering the allegations of Paragraph IV this Respondent denies that it discharged the persons named therein because of their membership in and/or activity on behalf of the Union.

This Respondent further denies that by its acts as alleged in the complaint, or otherwise or at all, it did discriminate in regard to hire and/or tenure of employment of the aforesaid employees, and denies that it did discourage and/or is discouraging membership in the Union, and denies that it has engaged in and/or is engaging in unfair labor

practices within the meaning of Sec 8, subsection (3) of the Act, or otherwise or at all.

V.

Answering Paragraph V this Respondent denies that it discharged the said James M. Davis on or about February 24, 1944, because he gave testimony under the Act in connection with proceedings had before the National Labor Relations Board, In the Matter of Kinner Motors, Inc., and International Association of Machinists, Lodge No. 94, for and on behalf of Lodge No. 311, AFL, known as Case No. 21-C-2307.

Respondent further denies that by these acts or any acts, Respondent did discriminate against said James M. Davis and/or did thereby engage in and/or is thereby engaging in, unfair labor practices within the meaning of Sec. 8, subsection (4) of the Act.

VI.

Answering Paragraph VI this Respondent denies that by its acts and each of them, as set forth in Paragraphs IV and V of the complaint or otherwise or at all, it did interfere with, restrain and/or coerce and/or is interfering with, restraining and/or coercing its employees in the exercise of the rights guaranteed in Sec. 7 of the Act, and denies that it did thereby or at all, engage in and is hereby engaging in, unfair labor practices within the meaning of Sec. 8, subsection (1) of the Act or otherwise or at all.

VII.

Answering Paragraph VII denies that the acts of Respondent as alleged in Paragraph IV, V and/or VI above, or any acts of this Respondent, constitute unfair labor practices, affecting commerce, within the meaning of Sec. 8, subsections (1), (3) and (4), and Sec. 2, subsections (6) and (7) of the Act.

VIII.

This Respondent denies that the acts of Respondent as set forth in Paragraphs IV, V and VI above, or any acts of the Respondent, occurring in connection with the operations of the Respondent as described in Paragraphs I and II above, have a close, intimate and/or substantial relation to trade, traffic and/or commerce among the several states of the United States, and denies that said acts or any acts of Respondent, tend to lead to labor disputes, burdening and obstructing commerce and/or the free flow of commerce.

Wherefore, Respondent prays that said complaint be dismissed.

VICTOR FRED COLLINS

Attorney for Respondent

State of California,
County of Los Angeles—ss.

Victor Semrau, being by me first duly sworn, deposes and says: that he is the Secretary of Kinner Motors, Inc., a corporation, Respondent in the above entitled action; that he has read the foregoing Answer of Kinner Motors, Inc., and knows

the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

VICTOR E. SEMRAU

Subscribed and sworn to before me this 13th day of May, 1944.

[Seal] ELIZABETH L. KULINS

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Feb. 14, 1946.

United States of America

Before the National Labor Relations Board

Case No. 21-C-2389

In the Matter of

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS, A.F.L.,

DECISION AND ORDER

On August 5, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom

and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief to support the exceptions. The Machinists has filed no exceptions or brief.

Pursuant to notice and at the request of the respondent, a hearing for the purpose of oral argument was held before the Board on November 30, 1944, at Washington, D. C. The respondent appeared by counsel and participated in the argument. The Machinists did not appear. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the respondent's exceptions and briefs including a brief submitted to the Trial Examiner, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted hereinafter.

At the oral argument before the Board, the respondent argued, among other things, that even if the respondent discriminatorily discharged Swope, Davis, and Gilpin, as the Trial Examiner found, the respondent was justified in denying reinstatement to them upon learning, subsequent to their discharge, of the derogatory statements made by them concerning the value of United States War Bonds, as more fully set forth in the Intermediate

Report, and that the Board, as a matter of policy, should withhold its normal remedy of reinstatement here because reinstatement of such employees would adversely affect morale among the respondent's remaining employees. Like the Trial Examiner, we do not condone the making of statements such as those made by the three employees involved herein, particularly in view of the fact that war workers are being urged to exert their utmost to speed production vital to the prosecution of the war. However, like the Trial Examiner, and for the reasons set forth in the Intermediate Report, we believe that, in failing or refusing to reinstate Swope, Davis, and Gilpin, the respondent was motivated by their union activities rather than by the fact that they had made the derogatory statements concerning war bonds. We are also of the opinion that under the circumstances disclosed here, reinstatement of the three discriminatorily discharged employees, in itself, would not adversely affect plant morale or production, and that effectuation of the purposes and policies of the Act requires their reinstatement with back pay. Nevertheless, nothing in our Decision and Order should be construed to preclude the respondent from resorting to nondiscriminatory disciplinary action appropriate to bar the resumption of such practice in the event that the three employees, or any of them, make any such derogatory statement with respect to United States War Bonds in the future.

In the intermediate Report the Trial Examiner rejected the respondent's contention that the three

employees should be denied reinstatement because they did not exhaust their remedies under the grievance procedure established pursuant to the respondent's contract with the Association. We agree with the Trial Examiner that such contention is without merit in view of the Board's previous determination that the Association is a company-dominated organization within the meaning of Section 8 (2) of the Act.¹ In addition, even if the Association were free of such taint, the contention is without merit in view of the express provisions contained in Section 10 (a) of the Act.²

ORDER

Upon the entire record in the case, and pursuant to Section 10 (a) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Kinner Motors, Inc., Glendale, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

- (a) Discouraging membership in International

¹Matter of Kinner Motors, Inc., 57 N.L.R.B. 622.

²Sec. 10 (a) provides: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." See, for example *N.L.R.B. v. Newark Morning Ledger Co.*, 120 F. (2d) 262, 267-268 (C.C.A. 3).

Association of Machinists, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment of any of its employees, or any term or condition of employment;

(b) Discharging or otherwise discriminating against any employee because he has given testimony under the Act;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Richard Arthur Swope, Lewis Gilpin, and James Macon Davis immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges;

(b) Make whole Richard Arthur Swope, Lewis Gilpin, and James Macon Davis for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to

each of them of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post immediately in conspicuous places in each of its Glendale, California, plants, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of International Association of Machinists, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(d) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 13 day of
December 1944.

HARRY A. MILLIS

Chairman.

GERARD D. REILLY

Member.

JOHN M. HOUSTON

Member.

[Seal]

NATIONAL LABOR RELA-
TIONS BOARD

[Title of Board and Cause.]

Mr. William B. Esterman, for the Board.

Mr. Victor Ford Collins, and Mr. Arnold M.
Cannan, of Los Angeles, Calif., for the respondent.

Mr. A. C. McGraw, of Burbank, Calif., for the
Machinists.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge duly filed on March 2, 1944, by
International Association of Machinists, affiliated
with the American Federation of Labor, herein
called the Machinists, the National Labor Relations
Board, herein called the Board, by its Regional
Director for the Twenty-first Region (Los Angeles,
California), issued its complaint dated May 11,
1944, against Kinner Motors, Inc., Glendale, Cali-
fornia, herein called the respondent, alleging that
the respondent had engaged in and was engaging in

unfair labor practices affecting commerce within the meaning of Section 8 (1), (3) and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, with notice of hearing thereon, were duly served upon the respondent and the Machinists.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent discharged Richard Arthur Swope, James Macon Davis, and Lewis Gilpin, its employees, because of their affiliation with and activity on behalf of the Machinists. The complaint further alleged that the respondent discharged James M. Davis because he gave testimony for and on behalf of the Machinists in a prior Board proceeding in which the respondent was charged with unfair labor practices.¹ Because of the foregoing conduct, the complaint alleged that the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In its duly filed answer to the Board's complaint, the respondent denied that it had engaged in any of the alleged unfair labor practices.

Pursuant to notice, a hearing was held on June 6, 7, 8, 9, and 12, 1944, at Los Angeles, California, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Machinists by a lay representative.

¹Matter of Kinner Motors, Inc. and International Association of Machinists, Case No. 21-C-2307.

All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the Board's case the respondent moved to dismiss the complaint insofar as it alleged the discriminatory discharge of the three named employees. The undersigned denied this motion. Near the close of the hearing, counsel for the Board moved to conform the pleadings to the proof as to minor particulars such as the spelling of names. The undersigned granted this motion. Oral argument, in which counsel for the Board and for the respondent participated, was heard at the conclusion of the taking of evidence. The parties were advised that they might file briefs with the undersigned. Pursuant thereto the respondent filed a brief.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Kinner Motors, Inc., a California corporation, owns and operates two plants at Glendale, California, herein called Plant 1 and Plant 2, respectively, where it is engaged in the manufacture of aircraft engine parts and the assembly of aircraft engines. During the calendar year 1943, the respondent in the course and conduct of its business, purchased

raw materials valued at more than \$7,000,000, of which materials valued at more than \$3,000,000 were transported to the respondent's plants from points outside California. During the same period respondent sold and distributed finished products valued at more than \$3,000,000, of which amount finished products valued at more than \$500,000 were made for delivery, and were delivered, by the respondent to points and persons outside the State of California.

The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Discrimination, interference, restraint and coercion

It is alleged that the respondent discriminatorily discharged Richard Arthur Swope, Lewis Gilpin, and James Macon Davis. The named employees were, at the time of their respective alleged discharges, employed by the respondent in its tool room at Plant 1, on the night or "swing" shift, and during the period involved were the sole employees in this department on the night shift of Plant 1. The tool room is on the same floor as, and adjacent

to, respondent's machine shop. The function of the tool room is to make, repair and maintain tools of various kinds that are required for the operation of machines in the production or manufacture of parts for the finished product. It is seen therefore that the work of the tool room and the machine shop is closely related. During the period herein involved, Ross Nichols was in charge of the tool room, and Foreman Brian Johnson was in charge of the machine shop at Plant 1. Clifton Malamphey, Jr., a toolmaker, was Nichols' assistant, and was in charge of the tool room during Nichols' absence.

Swope, an experienced mechanic, was employed by the respondent in June, 1940, and worked continuously thereafter for the respondent until February 17, 1944, when he was laid off or discharged. From a starting wage of 50 cents an hour, he received periodic increases and was, at the time his employment was terminated, paid 95 cents an hour plus a 5 cents an hour bonus allowed for work on a night shift. He was first employed on various machine operations in the machine shop, and in August 1943, was transferred to the tool room, after he had protested his rate of pay and had requested a certificate of availability which would enable him to seek employment elsewhere. At the time of the transfer, Swope's pay-roll classification was changed from "radial drill press operator" to "tool maker, Class C."² This change admittedly represented a promo-

²Tool makers are classified as A, B, and C, in descending order of skill and wage.

tion. He continued as a tool maker until the termination of his employment.

Davis, an experienced machinist, was employed by the respondent in October 1941, and worked continuously thereafter until February 23, 1944, when he was discharged or laid off. He was first employed in the sub-assembly of aircraft engines, and was later transferred to the machine shop on the second or "swing" shift. Effective March 3, 1943, Davis was classified as a Class C tool maker, at \$1.05 an hour. On March 16, 1943, he received a merit increase of 5 cents an hour. Effective July 16, 1943, he was reclassified as tool maker, Class B, at \$1.15. Effective December 1, 1943, Davis received a "merit increase for superior quality work," raising his basic wage from \$1.15 to \$1.20 an hour.

Gilpin, a machinist of many years' experience and with some 12 years of experience as a tool maker, was employed by the respondent as a machinist in December 1942, at \$1.25 an hour. After about one month in the machine shop, he was transferred to the toolroom, and worked continuously thereafter as a tool maker in Plant 1, night shift, until February 23, 1944, when he was laid off or discharged. Prior to July 16, 1943, he was classified as a Class B machinist; on August 16 of that year he was reclassified as a Class A machinist. As of the date his employment terminated, he was paid \$1.30 an hour plus a 5 cent bonus.

It is seen from the foregoing, that at the time of the termination of their employment, Swope, Davis and Gilpin were experienced tool makers, a

job classification requiring the highest degree of skill, and were also qualified as machine operators and all around machinists,³ having been engaged on numerous machine operations in their employment with the respondent, as well as previous thereto. It further appears that the work of the named employees was satisfactory throughout their tenure of employment. This is shown by their record of advancement in job classification and numerous wage increases. There are additional circumstances to support the conclusion. Early in December 1943, Davis approached Edward Davey, works manager in charge of production at Plant 1, and asked for a wage increase or a certificate of availability. Davey replied that he would see that Davis was "taken care of," and commented that the latter's work had been very satisfactory and that he had cited Davis to other employees to show the advancement that could be obtained through meritorious work. Davey also remarked, "Your friend Gilpin is the best man I have got in the toolroom . . . I don't know what I would do without him."⁴ On another occasion, in 1943, Brian Johnson remarked that Swope had broken a production record on a radial drill press operation. Respondent's position that the sole rea-

³"Machinist" represents a higher classification of skill than "machine operator," since the former is experienced in the operation of various machines whereas the latter may be required to operate only one type of machine.

⁴This finding is based on the uncontradicted and credited testimony of Davis.

son for the termination of their employment was lack of work, in effect, concedes that Swope, Davis, and Gilpin were satisfactory in the discharge of their respective duties.

Beginning December 13, 1943, a hearing was held pursuant to the Board's complaint which alleged that the respondent had dominated and rendered illegal assistance to the formation and administration of Kinner Motor Employees' Association, Inc., herein called the Association.⁵ The Board's complaint was based on a charge filed by the Machinists. In this hearing, Davis testified as a Board witness and gave testimony adverse to the respondent and, in particular, contradicted the testimony of Brian Johnson, a witness for the respondent. While neither Swope nor Gilpin testified in the hearing, they attended it and, on occasion, sat with Davis. It is clear that their presence at the hearing was known to management. Subsequent to the hearing, when asked by employee Edward Handzel how the hearing came out, Foreman Johnson remarked, "these damn fools over in the toolroom are just a bunch of trouble makers," and further said that he did not see why if they did not want to belong to the Association, they had to take the matter to the Board.⁶

⁵See footnote 1, *supra*.

⁶This finding is based on Handzel's credited testimony. Johnson denied that he made the statements attributed to him by Handzel or that he had a conversation with Handzel. In view of the entire testimony the undersigned is unable to credit his denial.

Subsequent to the Board hearing, Swope, Davis, and Gilpin participated actively in the Machinists' organizational drive. They each signed authorization cards, and wore Machinists' buttons while at work in respondent's plant, and Davis was designated Machinists' steward on his shift at Plant 1 and for some 10 days prior to his discharge or lay-off wore a steward button. Because of their close association, the three employees were sometimes referred to by other employees as "The Three Musketeers."

On January 25, 1944, the Board's Trial Examiner in Case No. 21-C-12307, issued his Intermediate Report in which he based certain findings adverse to the respondent on the testimony of Davis and discredited conflicting testimony of Foreman Johnson.⁷ On February 9, the Machinists distributed several hundred circulars outside respondent's plant advertising a union meeting. On February 17, when Swope reported for work, Ross Nichols, foreman in charge of the toolroom, advised him, without prior notice, that there was no further work for him. When Swope asked why he had not been given advance notice of the lay-off, Nichols replied, "Things are changing rapidly and one never knows what happens from one day to the next."⁸ Swope

⁷The Trial Examiner's findings were subsequently confirmed by the Board. See: 57 N.L.R.B. No. 103.

⁸This finding is based on Swope's credited testimony. Nichols gave a somewhat different version of the conversation but was, on the whole, a less credible witness than Swope. The undersigned, however,

returned several days later and was given his pay check and a termination slip which stated: "Laid off—Termination of Contract."

On February 23, when Gilpin and Davis reported for work at their usual hour they found that their work cards were missing and were advised by a plant guard that they were wanted at the personnel office. At the personnel office, a Miss Gremmels advised them, "You are terminated. Didn't you know it?" and reading from their termination slips, commented, "This says 'lay-off, lack of work.'" Personnel Director Emmett J. Sullivan, called from an inside office, said "Boys, I don't know a thing about this . . . Nick (Nichols) just called me and said there wasn't any work for you." Davis and Gilpin were then escorted inside the plant by an armed guard where they received their tool clearance slips. They returned for their checks on the following day and received their termination notices which stated: "lay-off; lack of work. No available work for this employee."

As previously noted, it is respondent's position that Swope, Davis and Gilpin were temporarily laid off because of lack of work. It appears that on December 29, 1943, contracts in an amount of \$1,500,00 involving production at Plant 1 were cancelled, leaving a balance of \$400,000 in contracts for that plant, and no new contracts for that plant were obtained until subsequent to February 23, 1944.

credits respondent's witnesses that it does not customarily give advance notice of discharge or lay-off.

It further appears that no toolmakers have been employed in the tool room at Plant 1, on a night shift, since the named employees were discharged or laid off. The tool room of the same plant on the day shift has functioned continuously to the present, but without increased personnel. There has also been a gradual reduction in personnel of the entire night shift at Plant 1 over a period of a year or more. The foregoing, however, presents only a partial picture of respondent's total operations.

In addition to Plant 1, respondent has had in continuous operation for the past year, Plant 2. The two plants are physically separated by a narrow alley and insofar as machine operations and tool making are involved, are engaged in production of the same general character, so that the transfer of personnel from one plant to the other is not only feasible but is a matter of common practice as shown by the entire record. Five of the total of 19 employees on the night shift of Plant 1 as of August 1, 1943, were thereafter transferred to jobs in Plant 2. Whereas the total employment at Plant 1 has been maintained at a fairly stable level, Plant 2 has had an increased personnel, exclusive of office help, of from 164 on July 31, 1943, to 450 on April 30, 1944. The cancellation of contracts involving Plant 1, as alleged by respondent in support of its position, appears actually to have had little effect on total employment, since respondent's own records show that a total of only 19 employees of Plant 1 were laid off on asserted grounds of lack of work or reduction in personnel due to cancellation of

contracts. Of these, 16 were engaged in motor mount installations in the field, and their employment was terminated when the installations were completed. It appears therefore that only Swope, Davis and Gilpin of all these employed on regular and continuous operations in Plant 1, had their employment terminated during this period for the alleged reason of lack of work.

Not only did the cancellation of contracts affecting Plant 1, not necessitate or cause a general reduction in personnel, but, to the contrary, respondent substantially increased its total personnel in the period immediately following the cancellations, and throughout the period prior to and subsequent to the lay-off or discharge of Swope, Davis and Gilpin, solicited applicants for jobs which these employees were qualified to fill, through advertisements inserted in various newspapers. During the period of January 1, 1944 to April 20, 1944, respondent hired a total of 137 employees for production or tool department jobs, at a wage rate of 85 cents an hour or more. Of these all were employed at Plant 2, except five who were employed at Plant 1, and seven were rehired after a leave of absence.

Swope, Davis and Gilpin testified that there was no slackening of work in the tool room at any time prior to their respective lay-offs or discharges. On January 1, 1944, subsequent to the cancellation of contracts, the respondent requested occupational draft deferment for Davis on the ground that he was engaged in a highly skilled operation, that it

would take six months to replace him, and that he could be replaced only out of industry. There is no plausible explanation for this request if respondent anticipated a slackening of work following cancellation of contracts which would require it to terminate Davis' employment. Assuming, however, that respondent closed its tool room on the night shift of Plant 1 because it was no longer essential to production, it would appear that as a matter of normal business practices, in view of the admitted difficulty in recruiting highly skilled employees under war conditions, respondent would not have terminated the employment of Swope, Davis and Gilpin without some effort to utilize their skills in the operation of its two plants. However, Nichols, who caused the termination of their employment, and Davey, with whom he consulted in the matter, both admitted that they gave no attention to the matter of utilizing the skills of these employees in other departments. That there was work available for them is clearly indicated.

On February 17, the date that Swope was discharged, respondent hired a toolmaker at Plant 2. On February 21, 25, 27 and 28 it hired employees in the following job classifications: milling machine operator, radial drill operator, grinder, surface grinder, and engine lathe operator, at wages ranging from 95 cents to \$1.20 an hour.

Swope, Davis and Gilpin were each qualified and experienced in these operations. Subsequently, respondent hired numerous other employees in ma-

chinist, machine operator, and other equivalent job classifications which the three named employees were qualified to fill. An incident which involved the hiring of Lee Munkachy casts further doubt on the validity of respondent's contention that Davis and Gilpin were laid off because of lack of work.

On February 23, the day on which Davis and Gilpin were laid off, Munkachy applied for tool and die work and was advised by Personnel Director Emmet J. Sullivan⁹ that there was no opening. On returning home that night he found a letter from Sullivan, dated February 23, which bore the following text:

We regret that in error you were told that we could not use you. We can start you in the tool room Monday night at \$1.05 per hour.

Please report at 4 p.m. Monday at the personnel office ready to start to work.

Munkachy saw Sullivan on Monday, February 28, and was advised by the latter that he would be hired as a toolmaker at Plant 1. When he reported for work the next day, however, he was asked to take a temporary job in Plant 2. It was his uncontradicted and credited testimony that he accepted the work with the understanding that he would be transferred to toolmaker work in Plant 1. Finding his work unsatisfactory in Plant 2, Munkachy asked for a release and was told by Howard Sharrar,

⁹At the time of the hearing Sullivan's title was Director of Industrial Relations, but throughout the period involved herein he was respondent's personnel director.

night superintendent at Plant 2, that within two weeks he would be transferred to Plant 1. Sharrar took Munkachy into Plant 1, showed him the tool room there, and advised him that he would work under Nichols. Later, Sharrar told Munkachy to "keep it under" his "hat" about the transfer and not to talk to other employees about it, since things were not yet ready for the transfer.

Sullivan testified with reference to the February 23 letter, that at the time he wrote the letter he did not know that Davis and Gilpin were being laid off. He also testified that the respondent did not keep in touch with laid off employees with reference to future employment. Admittedly, however, he saw Davis and Gilpin in the personnel office after 5 p.m. o'clock on February 23, at which time it is reasonably assumed, on the basis of his letter to Munkachy, he had received a requisition to hire a toolmaker. In any event, Davis and Gilpin had further contact with the personnel office on February 24, when they returned to get their final checks, at which time the personnel office indubitably had knowledge of the requisition. It further appears from Sullivan's testimony that requisitions for hiring came to him from the plant or department head. Therefore, it must be assumed that a requisition for the hiring of a toolmaker at Plant 1 had been issued by either Davey or Nichols as of the date Davis and Gilpin were laid off allegedly for lack of work. That Munkachy was not actually assigned to work in the tool room of Plant 1 but was advised that he would shortly be transferred

to that department and cautioned not to tell his fellow employees of the promised transfer, is strongly indicative, in the absence of any explanation whatever, of a deliberate effort to conceal the actual circumstances of his hiring.

In view of the actual hiring of numerous new employees of Plant 2 subsequent to and contemporaneous with the discharge of Swope, Davis and Gilpin, in positions which these employees were qualified to fill, the transfer of certain other employees from Plant 1 to Plant 2, and the equivocal circumstances of the hiring of a toolmaker on the date that Davis and Gilpin were discharged, as set forth above, the undersigned is unable to credit respondent's position that the employment of Swope, Davis and Gilpin was terminated because of lack of work.

Respondent's interference with the organizational activities of its employees, is established in the Board's finding that the respondent, shortly after the Machinists began an organizational drive among its employees, fostered and rendered illegal support to the Association.¹⁰ Personnel Director Sullivan and Foreman Brian Johnson participated in this illegal activity. Mention has been made of Davis having testified in the prior Board proceeding adversely to the respondent. It was not, however, until subsequent to the hearing and in the period immediately preceding their respective discharges, that Swope, Davis and Gilpin wore their Machinists buttons and that Davis was made steward on his

¹⁰See: 57 N.L.R.B. No. 103.

shift. The Machinist's leaflet distributed out the plant on February 9, is indicative of continuing organizational activity. Nichols, however, who, with Davey's approval, terminated the employment of the three named employees, denied that he knew that Davis testified in the Board hearing, that he discussed the hearing with representatives of management, that he had any knowledge that the Machinists were engaged in organizing respondent's employees other than what he gained from a newspaper report, or that he had ever seen Machinists buttons worn in the plant, although admittedly a number of employees wore such buttons. In view of the total circumstances, Nichols' denials are not credible and reflect an intent to conceal the actual motivation of the discharges.

On the basis of the foregoing findings of fact and the entire record, the undersigned finds that the respondent discharged Swope, Davis and Gilpin because of their union affiliation and activities, and, with especial reference to Davis, because of the latter's having testified in a prior Board hearing. By the aforesaid action, the respondent discouraged membership in the Machinists and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

It is the respondent's further contention that, assuming arguendo it laid off or discharged Swope, Davis and Gilpin because of their union activity, certain statements and conduct occurring while they were still employees of the respondent but which came to the knowledge of respondent subse-

quent to February 23, constitute cause for a refusal of reinstatement and should, as a matter of Board policy, bar their reinstatement.¹¹ In support of this position, respondent adduced testimony showing that each of the discharged employees made statements adverse to the purchase and sale of war bonds. Leslie Dayhoff, a Board witness, and Frank Holmes, John Shelley, Glenn Gilmore, John Szabo, Clifton Malamphey, Vera Allan, and Theodore Gerth, respondent witnesses, testified concerning the alleged statements, which appear to have occurred during the several war loan drives conducted by the U. S. Treasury Department.¹² The testimony of

¹¹The respondent also asserted as a bar to the reinstatement of the discharged employees, that they had failed to avail themselves of grievance procedure which the respondent alleged was provided in its contract with the Association. The Board having found that the Association was company dominated, it is obvious that the employees were not required to pursue a grievance procedure of a contract which was invalid from its inception.

¹²Dayhoff testified that Swope and Davis said that it was foolish to spend money for war bonds, that they would not "materialize," and that nobody would get their money back from them. He further testified "We had had arguments off and on about it." He admitted that he told Foreman Johnson that he did not believe in the sale of war bonds himself. Shelley testified that on an occasion when he had bought a bond, Gilpin remarked, "I guess we can paper the house with them when the war is over," and that on another occasion, Davis remarked that the bonds would not be worth a "darn" after the war. Gilmore testified that in the Fall of 1943, he heard both Gilpin and Davis say that the

these witnesses, collectively, is to the effect that on numerous occasions Davis and Gilpin, and much less frequently, Swope, expressed an opinion that war bonds would be worth little or nothing after

bonds would be no good after the war. He further testified that after the second bond drive, Gilpin offered to sell him a bond for \$10 and remarked, "If I buy them, I sell them, anyway." Malamphey, a tool maker and assistant to supervisor Nichols, testified that he had heard Davis and Gilpin say that the bonds would be no good after the war and they "were also selling them as soon as possible." According to Malamphey, Gilpin said that the Government would not have enough money to pay off the war bonds after the war because of a different "system." Apparently this was a reference to some doctrine of technocracy which appears to have furnished the basis for the statements that the bonds would have little monetary value after the war. Szabo testified that when he told Gilpin that he had bought about \$1500 worth of bonds, Gilpin said, "Well, they won't be worth a nickel after the war. They won't be no account." He also testified that in January, 1944, when Swope was solicited to purchase a bond, Swope replied, "I wouldn't give you a nickel for any War bond." Vera Allen testified that Davis came to her machine and "made the statement that the bonds would not be worth a nickel after the war." Gerth testified that he had heard Swope, Davis and Gilpin each say that the bonds would be no good after the war. The aforesaid witnesses were generally unable to give a detailed account of the conversations in which the aforesaid statements occurred.

Szabo who manifested an antagonism toward the discharged employees, admitted that he was opposed to labor unions. Allen was identified with the company-dominated Association and in a written statement given to Foreman Johnson on February 28,

the war. None of the aforesaid witnesses reported or complained to management concerning the aforesaid statements, prior to the discharge of the three employees, except Frank Holmes. Holmes testified that when he received his first bond, he told

stated that Swope, Davis and Gilpin had refused to buy bonds during the fourth war loan drive, but made no mention of Davis having made the statement mentioned in her testimony. Malamphey as assistant to Foreman Nichols, was identified with management, and after the Board hearing of December 1943, in which Davis testified as a Board witness, told Davis and Gilpin, "You guys didn't have any business bringing my name up down at the hearing." On another occasion, observing that Davis wore a Machinists' badge, Malamphey reminded him that he had previously said that he was against unions, and remarked, "I don't think much of a fellow that will say one thing and do another." Gerth, when Davis said that he believed that the employees might be represented by the Machinists "before long," replied: "I don't agree with you, . . . Knowing the company executives as I do, they will close the plant before they will allow any such union in this building." With due consideration of such bias as is reflected by the foregoing, the undersigned is convinced upon the basis of the entire testimony that Swope, Davis and Gilpin made statements relative to the sale and purchase of war bonds substantially as set forth in the preceding paragraph. The undersigned does not credit Szabo's testimony to the effect that Gilpin remarked on one occasion that the Red Cross profited from the sale of blood donations. There was no corroboration of this testimony and Gilpin denied that he made the statement. It was his undisputed and credited testimony that he donated blood on one occasion and was advised by his physician against further blood donation.

Davis and Gilpin that he had bought a \$50 bond, and they replied that the bonds would not be worth \$5 after the war. On that same day, Holmes told Foreman Brian Johnson of the statements. Johnson testified that he advised Holmes on that occasion, "Frank, don't take that seriously. They are just kidding you. You are just an old man and they are kidding you." Johnson did not consider, at that time—which according to him was the Fall of 1943—that the matter was serious enough to bring to the attention of management.

Gilpin admitted that he had stated that it was not patriotic to buy war bonds at a profit. "I would say that here or anywhere," he testified, "that I thought anybody that would buy war bonds for a profit while the boys are dying in France, wasn't very patriotic. I say give the money; they were giving their lives." He denied, however, that he stated that the bonds would be worthless. Davis admitted that he told Dayhoff on one occasion that he did not believe in "tying up all the money that a man had in War Bonds, because they might be frozen at any time and he wouldn't have the opportunity to get necessary money in case of sickness or so forth." He did not recall having said at any time that the bonds would be worthless. "I said," he testified, "that it was possible that the Government debt would get so big they couldn't pay off. I didn't say they would. I said it was possible." He also admitted that he told Dayhoff that he did not know that the bonds would be good

“since the war bonds in the first war were not redeemed at full price and this was a much bigger debt at this time than it was before.” Swope testified that after reading a newspaper article in January 1944, on the amount of money spent by the U. S. Treasury in advertising the sale of war bonds, he remarked to Dayhoff that it might be more practical to spend the money on the purchase of war materials instead of advertising. He did not recall ever having stated that the bonds would be worthless. Swope, Davis and Gilpin each participated in pay-roll deductions for the purchase of war bonds. Swope when first presented by Foreman Johnson with a form authorizing pay-roll deduction for the purchase of bonds, advised Johnson that he would take all he could, and later authorized an increase in his pay-roll deductions.

Upon the basis of the entire testimony, the undersigned is convinced that Swope, Davis and Gilpin each made statements to fellow employees, which would be understood by the employees addressed as adverse to the purchase of war bonds. The undersigned believes, however, that these statements were generally made in a context of casual discussion and arguments among employees,¹³ and that

¹³Shelley having testified that Davis told him the bonds would not be worth a “darn” after the war, on being questioned by Board’s counsel, “What did the other people say about it, if they said anything?” answered, “Just a matter of laughter, and that is all . . .” He also testified, “I said myself I didn’t think they would be any good.” According

while, in the opinion of the undersigned, certain of the statements were ill-advised and improper, they did not represent a wilful and malicious obstruction of the war effort, and are not distinguishable in principal from such criticism of certain phases of the war effort as is heard in and out of industry, and which is privileged under our constitutional guarantee of free speech. Throughout the period when these statements were made, Swope, Davis, and Gilpin were actually cooperating in the purchase of war bonds through pay roll deductions, and there is no evidence that their talk provided an actual impediment to the sale of war bonds¹⁴ or created disorder or commotion in the plant, or in any way interfered with respondent's production or discipline.¹⁵ Had it done so, it assuredly would have reached the ears of management, and yet Ross Nichols, immediate supervisor of the discharged

to Shelley, who worked on a day shift, "Anything the night shift does, the day shift jumps on them. Anything the day shift does, the night shift jumps on them. Any argument, it is always pro and con; it has always been that way."

¹⁴Sullivan testified: "For the Fourth War Bond we were awarded the Treasury Department Minute Man flag with the T and the star."

¹⁵Respondent's contention that reinstatement of the discharged employees would be disastrous to employee morale, appears groundless since there is no evidence that during a period extending from the summer of 1943 to February 1944, the morale of respondent's employees was adversely affected by the statements relative to the purchase and sale of war bonds.

employees, admitted that he never heard, and respondent admitted that it had no knowledge of, the statements prior to the date when the employment of Swope, Davis and Gilpin was terminated.

Sullivan testified that he first learned of the bond statements on February 28, from Foreman Brian Johnson who volunteered the information, and that he instructed Johnson to obtain proof of the statements in writing. Pursuant to these instructions, Johnson approached the employees during their working hours and asked them, "Do you want to make a statement in regard to the talk these boys have been passing around about the war bonds?" It appears that only Gerth, Allen and Szabo, of the employees thus approached, were willing to give written statements. Johnson testified that he told Sullivan that the employees were "incensed" over the bond talk and he thought something could be done to "restrain those boys," and that getting the written statements was his idea. It is recalled, however, that in the interval since Holmes talked to Johnson about statements of Gilpin and Davis on war bonds, at which time Johnson did not consider the matter serious enough to call to the attention of management, Davis had testified in a Board hearing concerning Johnson's activity in assisting the formation of the Association, in contradiction of Johnson's testimony in the same proceeding. Johnson's report to Sullivan and activity in procuring written statements from employees, many of whom were under his supervision, during their working hours, is

properly evaluated in the light of these circumstances, and in the light of Johnson's admission that the men in the tool room were "disagreeable" to him.

On or about March 3, 1944, there was a hearing before the local committee or representatives of the War Manpower Commission, on the matter of the reinstatement of the discharged employees. The respondent neither then nor thereafter until the present hearing, asserted the statements on *on* war bonds as reason for its refusal to reinstate the discharges. The undersigned is convinced in the light of the entire circumstances,¹⁶ that the respondent's position relative to the war bond statements, represents an effort and intent to evade the consequences of its illegal act of discriminatory discharge, and that its actual motivation both in the discharge and in the refusal thereafter to reinstate, is properly found in the union affiliation and activities of the three employees. The question therefore becomes one of remedy and it is for the Board to determine whether as a matter of policy it should direct the reinstatement of Swope, Davis and Gilpin.

While in no sense condoning the statements of the discharged employees relative to the purchase

¹⁶The respondent asserted as further reason for its refusal to reinstate, that the employees engaged in cooking on company premises in violation of company rules, but abandoned this defense when its position was rendered untenable. See also footnote 11, *supra*.

and sale of war bonds, the undersigned believes that in the absence of an affirmative showing that the said statements resulted in an interruption of or interference with production and/or discipline, the Board should not depart from its normal practices as to remedy.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent as described in Section I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, it will be recommended that the respondent cease and desist from such conduct and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

The undersigned has found that the respondent discharged Richard Arthur Swope, Lewis Gilpin, and James Macon Davis because of their union affiliations and activities, and, with particular reference to James Macon Davis, because he gave testimony under the Act. The undersigned will recom-

mend that the respondent offer Swope, Gilpin, and Davis, immediate and full reinstatement to their former or substantially equivalent positions and make each of them whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discriminatory discharge, to the date of the offer of reinstatement, less his net earnings¹⁷ during said period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

¹⁷By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

2. By discriminating in regard to the hire and tenure of employment of Richard Arthur Swope, Lewis Gilpin, and James Macon Davis and thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By discriminating against James Macon Davis in regard to hire, tenure, and conditions of employment because he gave testimony under the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (4) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Kinner Motors, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, affiliated with the Ameri-

can Federation of Labor, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) Discharging or otherwise discriminating against any of its employees because he has given testimony under the Act;

(c) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, affiliated with the American Federation of Labor, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

Offer to Richard Arthur Swope, Lewis Gilpin, and James Macon Davis immediate and full reinstatement to their former or substantially equivalent employment without prejudice to their seniority or other rights and privileges;

(b) Make whole Richard Arthur Swope, Lewis Gilpin, and James Macon Davis for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have earned as wages from the date of his

discriminatory discharge, as found herein, to the date of the respondent's offer of reinstatement, less his net earnings¹⁸ during such period;

(c) Post immediately in conspicuous places in each of its Glendale, California plants, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a), (b), and (c) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become or remain members of International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization of their choice, and that the respondent will not discriminate against any employee because of membership in or activities on behalf of International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization.

(d) File with the Regional Director for the Twenty-first Region, in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith;

It is further recommended that unless on or before ten (10) days from the receipt of this Inter-

¹⁸See footnote 17, *supra*.

mediate Report the respondent notify said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from

the date of the order transferring the case of the Board.

WILLIAM E. SPENCER
Trial Examiner

Dated: August 5, 1944.

(Affidavit of Service by Mail attached.)

[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS TO
INTERMEDIATE REPORT

Comes now Kinner Motors, Inc., and respectfully files this its Statement of Exceptions to Intermediate Report, dated August 5, 1944, and ordered transferred to the Board on August 8, 1944, and respectfully represents:

EXCEPTION No. 1

The evidence is insufficient to sustain the finding of the Intermediate Report (commencing Line 53, Page 2, to Line 2, Page 3), wherein it is found that the employee Swope was discharged.

EXCEPTION No. 2

The evidence is insufficient to sustain the finding (commencing Line 14, to Line 16, Page 3), reading as follows:

“Davis, an experienced machinist, was employed by the Respondent in October, 1941, and

worked continuously thereafter until February 23, 1944, when he was discharged."

EXCEPTION No. 3

The evidence is insufficient to sustain the finding (commencing Line 25 to Line 30, Page 3) wherein, among other things, it is found that the employee Gilpin was discharged.

EXCEPTION No. 4

The evidence is insufficient to sustain the finding (commencing Line 69, Page 5, to Line 3, Page 6) reading as follows:

"Assuming, however, that Respondent closed its tool room on the night shift of Plant 1 because it was no longer essential to production, it would appear that as a matter of normal business practices, in view of the admitted difficulty in recruiting highly skilled employees under war conditions, respondent would not have terminated the employment of Swope, Davis and Gilpin without some effort to utilize their skills in the operation of its two plants."

EXCEPTION No. 5

The evidence and the specific facts found are insufficient and do not justify the conclusion embraced in the last above-mentioned exception.

EXCEPTION No. 6

The evidence is insufficient to sustain the finding

(commencing on Line 9, Page 6) which reads as follows:

“On February 17, the date that Swope was discharged,” * * *

EXCEPTION No. 7

The evidence is insufficient to sustain the findings and the specific facts found do not justify the conclusions embraced in the Findings of Fact or Conclusions of Law embodied in the foregoing Exceptions.

EXCEPTION No. 8

The evidence is insufficient to sustain the finding (commencing on Line 14 to 21, Page 7) which reads as follows:

“In view of the actual hiring of numerous new employees at Plant 2 subsequent to and contemporary with the discharge of Swope, Davis and Gilpin, in positions which these employees were qualified to fill, the transfer of certain other employees from Plant 1 to Plant 2, and the equivocal circumstances of the hiring of a toolmaker on the date that Davis and Gilpin were discharged, as set forth above, the undersigned is unable to credit respondent's position that the employment of Swope, Davis and Gilpin was terminated because of lack of work.”

EXCEPTION No. 9

The evidence is insufficient to sustain the conclusion, and the specific facts found do not justify

the conclusion embraced in the exception last above referred to.

EXCEPTION No. 10

The evidence is insufficient to sustain the finding (commencing Line 45 to Line 52, Page 7) which reads as follows:

“On the basis of the foregoing findings of fact and the entire record, the undersigned finds that the respondent discharged Swope, Davis and Gilpin because of their union affiliation and activities, and, with special reference to Davis, because of the latter’s having testified in a prior Board hearing. By the aforesaid action, the respondent discouraged membership in the Machinists and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.”

EXCEPTION No. 11

That the evidence does not justify and the specific facts found do not justify and are inconsistent with the foregoing conclusions of law embraced in the last above referred to exception.

EXCEPTION No. 12

The evidence is insufficient to sustain the finding (commencing Line 4 to 6, Page 10) which reads as follows:

“The undersigned believes, however, that these statements were generally made in a context of casual discussion and argument among employees,” * * *

EXCEPTION No. 13

The evidence does not justify and the specific facts found do not justify the conclusion embraced in the last referred to exception.

EXCEPTION No. 14

The evidence is insufficient to justify the findings (commencing Line 13 to 16, Page 10) which reads as follows:

“and there is no evidence that their talk provided actual impediment to the sale of war bonds or created disorder or commotion in the plant, or in any way interfered with respondent's production or discipline.”

EXCEPTION No. 15

The evidence does not justify and the specific facts do not justify and are inconsistent with the conclusion embraced in the last referred to exception.

EXCEPTION No. 16

The evidence is insufficient to sustain the finding (commencing on Line 2 to 7, Page 11), which reads as follows:

“that the respondent's position relative to the war bond statements, represents an effort and intent to evade the consequences of its illegal act of discriminatory discharge, and that its actual motivation both in the discharge and in the refusal thereafter to reinstate, is properly

found in the union affiliation and activities of the three employees.”

EXCEPTION No. 17

The evidence does not justify and the specific facts found do not justify and are inconsistent with the conclusion embraced in the last above mentioned exception.

EXCEPTION No. 18

The evidence is insufficient to sustain the finding (commencing Line 12 to 16, Page 11), which reads as follows:

“While in no sense condoning the statements of the discharged employees relative to the purchase and sale of war bonds, the undersigned believes that in the absence of an affirmative showing that the said statements resulted in an interruption of or interference with production and/or discipline, the Board should not depart from the normal practices as to remedy.”

EXCEPTION No. 19

The evidence is insufficient to sustain the finding (commencing Line 35 to 46, Page 11), which reads as follows:

“The undersigned has found that the respondent discharged Richard Arthur Swope, Lewis Gilpin, and James Macon Davis because of their union affiliations and activities, and, with particular reference to James Macon Davis, because he gave testimony under the

Act. The undersigned will recommend that the respondent offer Swope, Gilpin and Davis, immediate and full reinstatement to their former or substantially equivalent positions and make each of them whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discriminatory discharge, to the date of the offer of reinstatement, less his net earnings during said period."

EXCEPTION No. 20

The evidence is insufficient to justify and the specific facts found do not justify and are inconsistent with the conclusions embraced in the last above referred to exception.

EXCEPTION No. 21

The evidence does not justify and the specific facts found do not justify and are inconsistent with the conclusion of law (commencing Line 10 to Line 14, Page 12), which reads as follows:

"2. By discriminating in regard to the hire and tenure of employment of Richard Arthur Lewis Gilpin, and James Macon Davis and thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act."

EXCEPTION No. 22

The evidence is insufficient to justify and the specific facts found do not justify and are inconsistent with the conclusion of law (commencing Line 16 to 19, Page 12) which reads as follows:

“3. By discriminating against James Macon Davis in regard to hire, tenure and conditions of employment because he gave testimony under the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (4) of the Act.”

EXCEPTION No. 23

The evidence is insufficient to justify and the specific facts found do not justify and are inconsistent with the conclusion of law (commencing Line 21 to 24, Page 12), which reads as follows:

“4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.”

EXCEPTION No. 24

That the evidence is insufficient to justify and the specific facts found do not justify and are inconsistent with the conclusion of law (commencing Line 26 to 28, Page 12), which reads as follows:

“5. The aforesaid unfair labor practices are unfair labor practices affecting commerce,

within the meaning of Section 2 (6) and (7) of the Act.”

EXCEPTION No. 25

That the evidence is insufficient to justify, the specific facts found do not justify and are inconsistent with the recommendation (commencing Line 57 to 61, Page 12) reading as follows:

“Offer to Richard Arthur Swope, Lewis Gilpin, and James Macon Davis immediate and full reinstatement to their former or substantially equivalent employment without prejudice to their seniority or other rights and privileges;”

EXCEPTION No. 26

That the evidence is insufficient to justify, the specific facts found do not justify and are inconsistent with the recommendation (commencing Line 1 to 6, Page 13), reading as follows:

“(b) Make whole Richard Arthur Swope, Lewis Gilpin, and James Macon Davis for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have earned as wages from the date of his discriminatory discharge, as found herein, to the date of the respondent’s offer of reinstatement, less his net earnings during such period;”

EXCEPTION No. 27

That the findings of fact and conclusions of law in said Intermediate Report are at variance and inconsistent, in that in some places the Trial Examiner found that the three employees were "discharged", in other places he found that they were "laid off" and in still other places he found that they were "laid off or discharged."

EXCEPTION No. 28

That the evidence is wholly insufficient to justify the finding that the employees, Davis, Gilpin and Swope were discharged for union activities or otherwise, or that any other finding is proper, other than the fact that said employees were laid off because of lack of work.

EXCEPTION No. 29

That the findings of fact are insufficient, in that the Trial Examiner did not find that the respondent was justified in not rehiring the three employees because of their unpatriotic activities in their statements to fellow employees, discouraging the sale of war bonds and thereby creating dissension, in-harmony, interruption of and interference with production and discipline.

Respectfully submitted,

VICTOR FORD COLLINS and
ARNOLD M. CANNAN

By VICTOR FORD COLLINS

Attorneys for Kinner Motors,
Inc.

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

KINNER MOTORS, INC.,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 3, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of Kinner Motors, Inc. and International Association of Machinists, A.F.L.," the same being Case No. 21-C-2389 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating William E. Spencer Trial Examiner for the National Labor Relations Board, dated June 6, 1944.

(2) Stenographic transcript of testimony held before Trial Examiner Spencer, on June 6, 7, 8, 9,

and 12, 1944, together with all exhibits introduced in evidence.

(3) Copy of Intermediate Report of Trial Examiner Spencer, dated August 5, 1944 (annexed to Item 11 hereof).

(4) Copy of order transferring case to the National Labor Relations Board, dated August 8, 1944.

(5) Copy of respondent's letter, dated August 11, 1944, requesting an extension of time to file exceptions and brief, and requesting permission to argue orally before the National Labor Relations Board.

(6) Copy of Board's telegram, dated August 14, 1944, granting all parties an extension of time for filing exceptions and brief, and granting permission to argue orally before the Board.

(7) Copy of respondent's exceptions to the Intermediate Report.

(8) Copy of notice of hearing for the purpose of oral argument before the Board, dated November 11, 1944.

(9) Copy of respondent's telegram, dated November 14, 1944, requesting advancement of the oral argument date.

(10) Copy of Board's notice of advancement of hearing for the purpose of oral argument before the Board, dated November 15, 1944. Oral argument was held on November 30, 1944.

(11) Copy of decision and order issued by the National Labor Relations Board, December 13, 1944, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 6th day of February 1945.

[Seal]

JOHN E. LAWYER

Chief, Order Section

NATIONAL LABOR

RELATIONS BOARD

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10984

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

KINNER MOTORS, INC.,

Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD,

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant
to the National Labor Relations Act (Act of July

5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151, et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Kinner Motors, Inc., Glendale, California, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Kinner Motors, Inc. and International Association of Machinists, A.F.L., Case No. 21-C-2389."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, and is engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on December 13, 1944, duly issued an order directed to the respondent, its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (e) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Kinner Motors, Inc.,

Glendale, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment of any of its employees, or any term or condition of employment;

(b) Discharging or otherwise discriminating against any employee because he has given testimony under the Act;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Richard Arthur Swope, Lewis Gilpin, and James Macon Davis immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges;

(b) Make whole Richard Arthur Swope, Lewis Gilpin, and James Macon Davis for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post immediately in conspicuous places in each of its Glendale, California, plants, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1(a), (b), and (c) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2(a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of International Association of Machinists, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(d) Notify the Regional Director for the Twenty-first Region, in writing within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On December 13, 1944, the Board's decision and order was served upon respondent by sending

a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's attorneys.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS
BOARD

MALCOLM F. HALLIDAY

Associate General Counsel

Dated at Washington, D. C., this 6th day of February 1945.

District of Columbia—ss.

Malcolm F. Halliday, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein,

and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

MALCOLM F. HALLIDAY

Associate General Counsel

Subscribed and sworn to before me this 6th day of February 1945.

[Seal]

JOHN E. LAWYER

Notary Public, District of
Columbia

My Commission Expires August 14, 1949.

[Endorsed]: Filed Feb. 12, 1945.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the respondent, Kinner Motors, Inc., in answer to the Petition for Enforcement of an Order of the National Labor Relations Board and denies and alleges as follows:

I.

That there is no substantial evidence to support the Findings of Fact.

II.

That the facts found by the Board are insufficient to sustain the order that the respondent is engaged in unfair labor practices within the meaning of Section 8 (1), (3) and (4) of the Act.

III.

That the Board's order is invalid.

IV.

That the evidence is insufficient to sustain the facts found that the employees were discharged and the only evidence is to the effect that the said employees were laid off.

V.

That the evidence is insufficient to sustain the findings that the respondent was not justified in rehiring the said employees by reason of their unpatriotic conduct in their statements concerning War Bond sales.

VI.

That the Board's order is invalid.

Wherefore, respondent prays that the Petition to Enforce the Order be denied and for such other and further relief as shall be meet and proper.

VICTOR FORD COLLINS

Attorney for Respondent,
Kinner Motors, Inc.

State of California,
County of Los Angeles—ss.

Victor Ford Collins, being by me first duly sworn,
deposes and says:

That he is the attorney for Kinner Motors, Inc.,
the respondent in the above entitled matter; that
the matters therein set forth are true of his own
knowledge, except as to matters therein stated on
his information and belief, and as to those matters
that he believes it to be true.

VICTOR FORD COLLINS

Subscribed and sworn to before me this 28 day
of February, 1945.

[Seal] HERSCHEL B. GREEN

Notary Public in and for the County of Los Angeles
State of California.

[Endorsed]: Filed Mar. 5, 1944.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10984

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

KINNER MOTORS,

Respondent.

ON PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the above-entitled proceeding:

I.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged and is engaging in unfair labor practices within the meanings of Sections 8 (1), (3) and (4) of the Act.

II.

The Board's order is valid.

Dated at Washington, D. C., this 6th day of February 1945.

MALCOLM F. HALLIDAY

Associate General Counsel,
National Labor Relations
Board.

[Endorsed]: Feb. 12, 1945.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED
UPON BY RESPONDENT

Pursuant to Section 6 of Rule 19 of the Court, the respondent, Kinner Motors, Inc., submits the following Statement of Points upon which it intends to rely in the above entitled proceeding:

I.

That there is no substantial evidence to support the Findings of Fact.

II.

That the facts found by the Board are insufficient to sustain the order that the respondent is engaged in unfair labor practices within the meaning of Section 8 (1), (3) and (4) of the Act.

III.

That the Board's order is invalid.

IV.

That the evidence is insufficient to sustain the facts found that the employees were discharged and the only evidence is to the effect that the said employees were laid off.

V.

That the evidence is insufficient to sustain the findings that the respondent was not justified in re-hiring the said employees by reason of their unpatriotic conduct in their statements concerning War Bond sales.

VI.

That the Board's order is invalid.

VICTOR FORD COLLINS,
Attorney for Respondent,
Kinner Motors, Inc.

[Endorsed]: Filed Mar. 5, 1944.

CCA #10984

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America.

To Kinner Motors, Inc., 635 West Colorado, Glendale, California, and International Association of Machinists, AFL, Att. Mr. A. C. McGraw, 9221½ San Fernando Road, Burbank, California.

Greeting:

Pursant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Re-

lations Board Act, Section 10(e)), you and each of you are hereby notified that on the 12th day of February, 1945 a petition of the National Labor Relations Board for enforcement of its order entered on December 13, 1944 in a proceeding known upon the records of the said Board as "In the Matter of Kinner Motors, Inc., and International Association of Machinists, A.F.L., Case No. 21-C-2389," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 12th day of February in the year of our Lord one thousand, nine hundred and forty-five.

[Seal] PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
Sou. District of Calif.—ss.

I hereby certify and return that I served the annexed order to show cause on the therein-named

A. C. McGraw, International Association of Machinists, 922½ San Fernando Road, Burbank, Calif., by handing to and leaving a true and correct copy thereof with him personally at Burbank, Calif. in said District on the 15th day of February, 1945.

ROBERT E. CLARK

U. S. Marshal.

By GEORGE V. ROSSINI,

Deputy.

Marshal's Fees	\$ 4.00
Mileage	1.60
	<hr/>
Total	\$ 5.60

RETURN ON SERVICE OF WRIT

United States of America,
Sou. District of Calif.—ss.

I hereby certify and return that I served the annexed order to show cause on the therein-named Kinner Motors, Inc., 635 West Colorado, Glendale, Calif. by handing to and leaving a true and correct copy thereof with Victor E. Senrau, Secretary-Treasurer personally at Glendale, Calif. in said District on the 15th day of February, 1945.

ROBERT E. CLARK,

U. S. Marshal.

By GEORGE V. ROSSINI,

Deputy.

[Endorsed]: Filed Feb. 26, 1944.

Before the National Labor Relations Board
Twenty-First Region.

Case No. 21-C-2389

In the matter of:

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, A.F.L.

Room 901 Board of Trade Building,
111 West 7th Street,
Los Angeles, California,
Tuesday, June 6, 1944.

PROCEEDINGS

Trial Examiner Spencer: The hearing is in order.

This is a formal hearing before the National Labor Relations Board in the matter of Kinner Motors, Inc., and International Association of Machinists, A. F. of L.; Case No. 25-C-2389.

The Trial Examiner appearing for the National Labor Relations Board is William E. Spencer.

I note the following appearances:

For the respondent, Kinner Motors, Inc., Victor Ford Collins, 111 Board of Trade Building, Los Angeles, California.

Appearing for the National Labor Relations Board is William B. Esterman.

*Page numbering appearing at top of page of original certified Transcript of Record.

Are there any other appearances?

Mr. Collins: Yes, I would like the record to show that Arnold M. Cannan is associated with me in this hearing.

Trial Examiner Spencer: And the address?

Mr. Collins: The same as mine.

Trial Examiner Spencer: Is he associated with your firm?

Mr. Collins: We do not have a firm. He is associated with me in this case.

Trial Examiner Spencer: In this hearing?

Mr. Collins: Yes. [3]

Mr. McGraw, A. C. McGraw, Lodge 758 of the International Association of Machinists.

Trial Examiner Spencer: Will you let us have your address, please.

Mr. McGraw: 9221½ South San Fernando Road, Burbank, California.

EMMETT J. SULLIVAN

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination [10]

Q. Now, you have before you the personnel file of Richard [25] Swope? A. Yes.

Q. Will you refer me, Mr. Sullivan, to those questions of the file which relate to Mr. Swope's classification—if I may use that word—from the time he was with the company until the time he left?

(Testimony of Emmett J. Sullivan.)

A. I have copies of what we call "Change of Status Notice," showing any change that affected the employee's pay or classification as far back as we could compile records, when I started to make up records over there.

Q. So that, according to your personnel file, unless counsel objects, I am not going to ask for anything in evidence unless I think it should be. In order to save time I am going to refer to these matters.

Mr. Collins: I have no objection.

Q. (By Mr. Esterman): According to your personnel file, with respect to Mr. Swope, he was, at least on August 16, 1943, classified as a radial drill press operator, and on that date, August 16, 1943, reclassified as a tool maker.

A. Class C tool maker.

Q. Is that correct?

A. Change of classification, and promotion, they called it.

Trial Examiner Spencer: Was it a promotion?

The Witness: To a higher classification. [26]

Mr. Esterman: I think the witness was testifying from the Change of Status Notice.

Q. (By Mr. Esterman): Were you not?

A. Yes.

Q. "Reason for the Change"? A. Yes.

Q. "Change of Classification; Promotion"?

A. That is correct.

Q. Now, will you show me the same informa-

(Testimony of Emmett J. Sullivan.)

tion, if you will please, with respect to Mr. Gilpin, Lewis Gilpin? A. Yes.

Q. This shows, does it not, Mr. Sullivan, that from July 16, 1943, until August 16, 1943, Mr. Gilpin was classified as a Class A Machinist, and prior to the first date I mentioned he was classified as a Class B Machinist; is that correct?

A. Yes, that classification is according to the hourly rate, you see.

Q. That is to say, that a Class A machinist might be doing the same work as a Class B machinist, but he is getting more money.

A. No, sir.

Q. What does it indicate?

A. He must qualify as a Class A in accordance with the job description, and the rate is given for the higher qualifications of A, B and C classifications. [27]

Q. How, in general, does a B machinist qualify for an A machinist rating?

A. He becomes more proficient in setup work, doing operations on that, which requires closer tolerances, etc.

Q. Have you finished? A. Yes, sir.

Q. There is no particular line you draw, however, with respect to particular things he can or cannot do? Isn't that a fact, that the change in classification comes when, in the judgment of the company or management, the man has improved to the extent he rates a higher rate of pay and higher classification? Isn't that substantially the

(Testimony of Emmett J. Sullivan.)

fact? If it isn't, will you tell me what is the fact?

A. That would be the logical thing to do, is to only reclassify a man when he deserved a reclassification. But we are not always able to do that. We are required, in many cases, in order to keep our men, to pay them a nickel or dime more an hour, and by so doing, to be in accord with our rate schedules, we must reclassify them to C, B or an A, as the case may be. Many times they don't deserve the classification, but it is either pay them the money or lose them. I won't say that all our Class A men in our plant today would be class C men of 10 years ago or 5 years ago; if that has any bearing on the subject.

Q. I will accept your answer. So that on Board's Exhibit [28] 2, the classification of Gilpin, machinist, in fact, that is what he was? A. Yes.

Q. Do you have the same data relating to James M. Davis? A. Yes.

Q. Now, your personnel file with respect to Davis shows that—I am not excluding other dates in mentioning this date, but I am picking this one—on March 9th, effective date March 3rd, James M. Davis was classified as a toolmaker in the tool room. Does this C mean anything?

A. That is the lowest classification of tool makers.

Q. He was classified as tool maker C at \$1.05?

A. That is correct. He was given a 5 cent increase as a merit increase.

(Testimony of Emmett J. Sullivan.)

Q. That is March 16th?

A. That is right.

Q. Your file also shows subsequently on July 12th, effective July 16th, he was reclassified to tool maker Class B at \$1.15 an hour. "Reason for Change: Merit Increase"; is that correct?

A. That is correct.

Trial Examiner Spencer: That is what date? Reclassified what date?

Mr. Esterman: July 12, 1943; effective the 16th.

Q. (By Mr. Esterman): It also shows, does it not, that [29] on July 16th, effective July 16, 1943, he was reclassified? A. No.

Q. No, he wasn't reclassified. What does it show? Will you tell me?

A. He was given a 5 cent an hour night bonus after we received approval of the War Labor Board.

Q. That is from \$1.15 to \$1.20?

A. No, \$1.15 plus 5 cent bonus. That is removable if he goes to the day shift.

Q. That is not part of the rate? A. No.

Q. On July 16, 1943, he became what you here describe as a Junior Tool Maker, occupational Code No. B. On November 29, 1943, effective December 1, 1943, under the same classification he received a merit increase for superior quality work; did he not? A. That is correct.

Q. On that date, the date I have just mentioned, his rate became \$1.20 an hour plus night bonus?

A. Yes.

(Testimony of Emmett J. Sullivan.)

Q. What is the difference between a tool maker and a junior tool maker?

A. A junior tool maker is the beginner in the tool room. He does the simpler jobs. The old timer brings him along and teaches him. It is more or less an apprenticeship class- [30] ification.

Q. I am interested in your answering that question in the light of the job history which we have just discussed, which shows he was a junior tool maker after he was with the company some time, instead of at the beginning.

A. Yes, he didn't start in the tool room. He might have started in the machine shop. The machine shop and the tool room are a good many miles apart when it comes to skill and ability.

Q. Does your record show when he went in the tool room in Plant 1?

A. Well, I would say a Class C, he would have to start here. Our lowest price for tool maker, I believe is 90 or 95 cents an hour.

Q. He was at that time, in March, 1943?

A. Yes, sir, that is correct.

Q. According to your personnel file, can you tell me approximately when he went in the tool room? Can you tell from any records?

A. Yes, it indicates that he received the starting rate in the tool room March 16th—no, March 9th. He was in the tool room that period. This was effective March 16th.

Q. As a tool maker C?

A. Correct.

(Testimony of Emmett J. Sullivan.)

Q. As a tool maker C, according to your schedule of [31] classifications, he is less qualified than a junior tool maker?

A. No. If he is a Class C tool maker, he is the lowest. He is the starting rate of tool maker. Sometimes they put "junior" before that, write it in. It isn't necessary. It determined by the rate.

Q. Well, what I am trying to get at is this: When you use the word "tool maker" as against the words "junior tool maker", you mean two different things, don't you?

A. A junior tool maker, at \$1.00 an hour, is the same as a Class C tool maker at \$1.10 an hour.

Q. What is the highest rate approximately that tool makers are paid now at your plant?

A. At our plant?

Q. Yes. A. \$1.45 an hour.

Q. Ranging from what low rate?

A. I believe it is 95 cents. The lowest, the minimum of Class C, to the maximum of Class A.

Q. However, you couldn't tell from a man's rate whether he was a tool maker, junior tool maker or Class C, or any other class?

A. Yes, you could from his rate.

Q. You could tell exactly?

A. Yes, because the rate changes. When he reaches a certain amount he is at the end of his rate range for the [32] Class C, and his next raise or promotion takes him into the minimum of the Class B; progresses through that way.

(Testimony of Emmett J. Sullivan.)

Q. Do you know what the wage rate range for tool makers was in February, 1944?

A. It is the same as it was in our plant in February, 1944. It has been the same since July 5, 1943, when our approved rate ranges were returned from the War Labor Board.

Q. I am now using the word "tool maker" in the sense you distinguished it from the other kinds of tool makers.

A. Yes.

Q. I am asking what the wage rate range was for tool makers of the higher grade, as distinguished from the others. I don't mean the whole range, but the range from the top classification of tool makers.

A. The same as it was July 5, 1943.

Q. You don't mean that a top grade tool maker would make 90 cents an hour in February?

A. I misunderstood you.

Q. I want a range for the particular classification. When I say classification I mean the highest grade of tool maker, the highest point. Would that be \$1.40?

A. The Class A maximum is \$1.45.

Q. What is the minimum?

A. You have got me. I can't remember. There are a lot of them, 300 of them. I can't keep them in my head. I could [33] have brought my rate range.

Q. Is there a minimum?

A. Yes, there is a minimum of each classification. [34]

(Testimony of Emmett J. Sullivan.)

Q. Now, the company operates what are known as Plants 1 and 2, does it not, in Glendale?

A. That is correct.

Q. When you came with the company in July, 1942, were there two plants or just one plant?

A. There were two.

Q. Was Plant 2 in the process of building or preparation?

A. It was in the process of tooling for an engine that never got into production due to cancellation.

Q. The plant wasn't producing at the time you came?

A. It wasn't producing, no sir; it was tooling.

Q. Is Plant 2 producing now?

A. Yes, sir.

Q. When did it start producing?

A. Approximately, I would say March or April of this year, to the best of my knowledge; it is not official.

Q. You mean 1944? A. Yes. [38]

Q. However, there were a number of people employed before that date? A. Yes, sir.

Q. In Plant 2? A. Yes.

Q. In general, what were they occupied with in Plant 2?

A. They were occupied with tooling and with various machine operations on the product, but when I say production I mean the completion of at least some finished pieces of what we are making.

Q. You mean they were occupied with production before March or April of this year?

(Testimony of Emmett J. Sullivan.)

A. Yes. There were parts going through the preliminary operation.

Q. Before that time, in Plant 2?

A. Yes, some before that time. They had to complete the operations and get some shipped before I would say it was in production. That is what I mean.

Q. When you went into production, if I may use that expression, in Plant 2, did you require additional help in the way of machine operators, and so on?

A. No, sir, we have to have and had to have that force before actual completion of any of the pieces.

Q. You say you went into production in Plant 2 with the same people that tooled up the plant; is that what you are [39] saying?

A. Yes, that is correct.

Q. You didn't hire any people to go into Plant 2?

A. Yes, we are replacing all the time. We have to hire a hundred people a month to keep even.

Q. Did you, from time to time, take people in Plant 2 from Plant 1?

A. Yes, sir.

Q. And vice versa?

A. No.

Q. You have never moved anyone from Plant 2 into Plant 1?

A. Not to any great extent. There might have been a test stand man or so moved back and forth, a welder; no great groups were ever sent from Plant 2 to Plant 1.

(Testimony of Emmett J. Sullivan.)

Q. You are not saying there were no transfers, are you?

A. I couldn't state that there were any official transfers of employees from Plant 2 to Plant 1, unless I checked the records to see.

Q. You don't know then? A. No, sir.

Q. Do both plants have tool rooms?

A. Yes, sir.

Q. Now, Plant 1 works, does it not, on the first and second shift arrangement, that is, two shifts, one day and one night? [40]

A. They have two shifts.

Q. Two shifts? A. That is correct.

Q. Is that also true of Plant 2?

A. That is correct.

Q. Has that been true of Plant 2 since it started operating? Has that always been true of the plants since you came with the company?

A. When I first came with the company the Plant 2 had a night shift of a very small number of men, no productive people, no machine operation; they were tooling. But they did have a 2-shift setup, so that when the time came to fill up the night shift they had it all set up.

Q. Where did they get their people for the night shift? Did they get some from the day shift?

A. Very few were transferred from the day shift to the night shift; the reverse is true.

Q. They got some?

A. I couldn't tell to any great—

(Testimony of Emmett J. Sullivan.)

Q. I am interested in your last remark, when you say very few transferred that way. Have people transferred from the night shift to the day shift in your experience? A. Yes.

Q. In both plants?

A. Yes. We give them the privilege, when there is an [41] opening on the day shift they have the privilege of taking it.

Q. That is at the request of the employees?

A. That is right; lots of them don't want to work then.

Q. Has the company, at any time in your experience, requested of employees as to whether they wish or would like to be transferred from one shift to the other, in order to suit the production requirements of the company?

A. When they are hired in the personnel department, we have to hire them on the night shift when there is no day opening. We leave it to their supervisory people in the plant to talk it over with them and let them change if there is a suitable opening.

Trial Examiner Spencer: This last exhibit marked No. 2 for identification, you have not offered it. Did you intend to offer it?

Mr. Esterman: I intended to offer it, but I want to know more about it.

Please mark this as Board's Exhibit 3.

(Thereupon, the document referred to was marked as Board's Exhibit No. 3, for identification.)

(Testimony of Emmett J. Sullivan.)

Q. (By Mr. Esterman): I show you a document marked Board's Exhibit 3, Mr. Sullivan, bearing the heading "4(B) The Names and Classifications of all Employees of Kinner Motors, Inc., Whose Employment was terminated during [42] the period from August 1, 1943, to April 20, 1944, by reason of a reduction of force or lack of work due to cancellation of contracts or orders for the production of goods, together with the date of each such termination."

Mr. Esterman: I will state this document was handed to me by counsel as being a tabulation of the data requested in paragraph 4 (B) in the subpoena.

Q. (By Mr. Esterman): I will ask you if you will state for the record, in brief, how this document was prepared?

A. That was tabulated by my personal secretary from the daily personnel sheets.

Q. That is to say, you have some form of daily report indicating layoffs? A. Yes, sir.

Q. And including the names and dates, classifications, et cetera, of each person involved?

A. Yes.

Q. By going over those daily sheets from August, 1943, to April 1944, your secretary was able to obtain this information? A. Yes, sir.

Q. I take it, referring to the bottom of the page, that there were no terminations after March 28th and before April 20th shown here; that there were,

(Testimony of Emmett J. Sullivan.)

in fact, no terminations for this reason; is that correct? [43]

Mr. Collins: I didn't understand that.

The Witness: I didn't get that, either.

Mr. Esterman: I will say it over again.

Q. (By Mr. Esterman): This means, Mr. Sullivan, doesn't it, that between March 28, 1944 and April 20, 1944, there was no one discharged by the company for lack of work or due to cancellation of contracts or because of reduction of forces.

Mr. Collins: I object to that on the ground it is a misconstruction of the instrument. If I understand your question it, on the face, says they were laid off, right down the side "Reason for termination."

Mr. Esterman: I will say it again.

Trial Examiner Spencer: Do you want the reporter to read it?

Mr. Esterman: I want to know if this document is complete to April 20th, and I am asking the witness if it isn't a fact, from looking at the document, that between March 28th, which is the last discharge on it, and April 20th, if it isn't a fact there were no discharges during that period for these reasons?

Trial Examiner Spencer: For the reasons stated on the document?

Mr. Esterman: Yes.

Q. (By Mr. Esterman): Referring to Board's Exhibit 3, [44] Mr. Sullivan, for identification, and looking at the second name, D. B. Jowidin, engine

(Testimony of Emmett J. Sullivan.)

assembler, do you know what work that man was doing at the time? In general, I mean, not specifically? A. Yes.

Q. What work was he doing?

A. He was doing field installations of our engines.

Q. Does field mean some place other than the plant? A. That is correct.

Q. Away from the plant?

A. That is correct. They all go out from the plant on these jobs.

Q. Is that also true, in general, of the other persons designated as engine assemblers on that sheet? I am referring to Board's Exhibit 3.

A. That is correct.

Q. At least, it is generally true? A. Yes.

Q. Now, what is the fact with respect to the person named John Russo, final assembler, what work was he doing at that time, if you know?

A. He was doing motor mount installation on one of the various air fields.

Q. To make this short, although the classifications beginning with the second and ending with the name Alonzo [45] Phillips, those classifications between those two names refer to persons who, when they were terminated, were working as you describe it in the field. A. That is correct.

Q. Is that correct? A. Yes.

Q. Thank you. Now, will you look at the last name of Nilsen, welder, and tell me if you know

(Testimony of Emmett J. Sullivan.)

where he was working at the time he was terminated.

A. Working in the test stands in Plant 2.

Q. Is that in connection with the testing of engines? A. That is correct.

Q. It was your statement, wasn't it, that the welder was working in Plant 2?

A. In the test stands in Plant 2.

Q. Do you know that?

A. Yes, I happened to be there when he terminated.

Mr. Esterman: Please mark this as Board's exhibit next in order.

(Thereupon, the document referred to was marked as Board's Exhibit No. 4, for identification.)

Q. (By Mr. Esterman): I show you a document, Mr. Sullivan, which has been marked for identification as Board's Exhibit 4, and which consists of six pages, and which I will state has been in my possession since yesterday and was furnished [46] me by your counsel with the general statement it represents a tabulation of the data for which paragraph 4(C) in the subpoena calls. The document is entitled "The Names and Classifications of all Persons hired or rehired by Kinner Motors, Inc., from January 1, 1944, to April 20, 1944, for work on production and/or tool department jobs, at a wage rate of 85 cents per hour or more, together with the date of each hiring or rehiring."

(Testimony of Emmett J. Sullivan.)

I will ask you if you will state generally in what manner this document was prepared, if you know?

A. It was also prepared by my secretary in my own office from the daily personnel records.

Q. That is to say, you have the records to show the names of the persons hired and the other data with respect to the jobs to which they are hired and the wage rate and the plant to which they are sent; is that correct? A. That is correct.

Q. This represents then, this list shows, rather, the names and the other data in the other 4 columns relating to all persons answering the description at the heading of the page, who were hired between January 1, 1944 and April 20, 1944; is that correct?

A. That is correct.

Q. Any one that has been hired during that period, for work on production and/or to department jobs at 85 cents per [47] hour, whether in Plant 1 or Plant 2, would be in this list; is that correct? [48]

(The documents referred to were marked as Board's Exhibits 2, 3, 4, 5-A to 5-J for identification and received in evidence.)

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 2

4 (A) The names and classifications of all persons employed by the Kinner Motors, Inc., on the night shift in Plant One during the payroll period which included August 1, 1943.

Name	Pencil notations	Classification
Albert E. Stalker	to #2, Aug. 4, '43	Engine Lathe Opr.
Fred E. Brown	no change	Machinist
James E. Wilson	terminated 12/23/24	Test Stand Opr.
Roy C. Walker	no change	Milling Machine Opr.
Henry F. Roth	terminated 9/29/43	Radial Drill Opr.
Brian C. Johnson	night foreman	Machinist
Henry J. Woodsford	to Plant 2 Sep. 8, '43	Machinist
Leslie M. Dayhoff	no change	Engine Lathe Opr.
Alfred Woodsford	to #2, 9/8/43	Machinist
Edward W. Anderson	to #2, 8/4/43	Turret Lathe Opr.
Richard Swope		Radial Drill Opr.
John Szabo	no change	Machinist
Ronnie Linkogle	no change	Radial Drill Opr.
Lewis E. Gilpin		Machinist
James M. Davis		Jr. Toolmaker
Frank C. Keeley	terminated 8/23/43	Machinist
Oren H. Cadaret	to #2, 10/1/43	Milling Machine Opr.
Wallace T. Gerth	no change	Engine Lathe Opr.
Harley J. James	term. Oct. 19, 1943	Drill Press Opr.

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 3

4 (B) The names and classifications of all employees of Kinner Motors, Inc., whose employment was terminated during the period from August 1, 1943 to April 20, 1944 by reason of a reduction of force or lack of work due to cancellation of contracts or orders for the production of goods, together with the date of each such termination.

Name	Plant	Date Terminated	Classification	Reason for Termination	(Layoffs)
Lawrence Brown	2	8-18-43	Maintenance Man	Lack of work	
D. B. Jowidin	1	10-18-43	Engine Assembler	Motor mount installations completed (Field work)	
W. H. Trucker	1	10-18-43	Engine Assembler	"	"
Mark Smothers	1	10-18-43	Engine Assembler	"	"
L. H. Parsons	1	10-18-43	Engine Assembler	"	"
J. O. Haberreiter	1	10-18-43	Engine Assembler	"	"
Phillip W. Paulsen	1	10-18-43	Engine Assembler	"	"
William Duerkson	1	10-23-43	Engine Mechanic	"	"
John Russo	1	11- 1-43	Final Assembler	"	"
Henry B. Steadman	1	11- 1-43	Final Assembler	"	"
Hayden L. Miller	1	11- 1-43	Engine Assembler	"	"
Clayton E. Dove	1	11- 1-43	Final Assembler	"	"
Frank Sota	1	11-13-43	Engine Mechanic	"	"
Paul Arnett	1	11-13-43	Engine Assembler	"	"

(Testimony of Emmett J. Sullivan.)

Board's Exhibit No. 3—(Continued)

Name	Plant	Date Terminated	Classification	Reason for Termination	(Layoffs)
Marion Henderson	1	11-13-43	Engine Mechanic	Motor mount installations completed (Field Work)	
Gordon La Fond	1	11-23-43	Engine Assembler	"	"
Alonzo Phillips	1	11-23-43	Engine Assembler	"	"
Richard Swope	1	2-16-44	Jr. Toolmaker	Lack of work.	Tool room closed.
James M. Davis	1	2-23-44	Jr. Toolmaker	"	"
Lewis Gilpin	1	2-23-44	Machinist	"	"
Nils F. Nilsen	2	3-28-44	Welder	Lack of work.	

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 4

4 (C) The names and classifications of all persons hired or rehired by Kinner Motors, Inc., from January 1, 1944 to April 20, 1944, for work on production and/or tool department jobs, at a wage rate of 85c per hour or more, together with the date of each such hiring or rehiring.

Name	Date Hired	Classification	Rate	Plant
Frank Cali	1- 5-44	Radial Drill Operator .....	.85	2
Ralph Wintode*	1- 5-44	Grinder .....	.95	2
Carl Nowacki	1- 6-44	Grinder	1.30	2
Sidney Brown	1- 6-44	Boring Machine Operator	1.10	2
Harold L. Frederickson	1- 6-44	Drill Press Operator .....	.95	2
James C. Heffner	1- 6-44	Radial Drill Operator	1.00	2
Robert Fagg	1- 7-44	Toolmaker	1.30	2
Robert Bray	1- 8-44	Grinder	1.00	2
William Grunau	1-10-44	Assembler .....	.85	2
Henry Bocchini	1-10-44	Test Mechanic .....	.95	2
Arthur Jackson	1-10-44	Milling Machine Operator	1.00	2
Frank Hauglum	1-10-44	Radial Drill Operator	1.00	2
Bernard Green*	1-10-44	Test Mechanic .....	.95	2
Joe Arell	1-10-44	Internal Grinder	1.00	2
Landis Little	1-12-44	Assembler .....	.85	2

* Rehired—Returned from leave of absence.

Board's Exhibit No. 4—(Continued)

(Testimony of Emmett J. Sullivan.)

Name	Date Hired	Classification	Rate	Plant
Edward W. Borne	1-12-44	Boring Machine Operator	1.10	2
Dale E. Maxwell	1-13-44	Assembler .....	.90	2
Clayton L. Gross	1-13-44	Grinder	1.20	2
Nathan F. Hibbs	1-13-44	Boring Machine Operator	1.00	2
Ludlow S. Falmestock	1-14-44	Radial Drill Operator .....	.95	2
Paul E. Kleel	1-14-44	Test Mechanic .....	.95	2
Erasmo Bianco	1-14-44	Radial Drill Operator	1.00	2
Leon A. Gendreau	1-17-44	Grinder	1.10	2
Ward Y. Howeth	1-17-44	Assembler .....	.95	2
Lyman W. Sanders	1-17-44	Radial Drill Operator .....	.95	2
Harold T. Jones	1-17-44	Radial Drill Operator .....	.95	2
James T. Holbrook	1-18-44	Assembler .....	.90	2
Ralph Slate	1-18-44	Boring Machine Operator	1.00	2
John E. Fitzgerald	1-19-44	Toolmaker	1.00	2
Eugene O. Davis	1-20-44	Grinder	1.20	2
Clarence L. Gibbs	1-20-44	Assembler .....	.85	2
Edward Kantak	1-24-44	Assembler .....	.85	2
Frank A. Bell	1-24-44	Radial Drill Operator .....	.90	2
Norman Searle	1-25-44	Assembler	1.25	2
Leo Erickson	1-28-44	Grinder	1.10	2
Frank Wislowsky	1-31-44	External Grinder	1.10	2

(Testimony of Emmett J. Sullivan.)

Name	Date Hired	Classification	Rate	Plant
Leslie R. Hayes	1-31-44	Radial Drill Operator	1.10	2
Walter Chung	2- 1-44	Tool and Cutter Grinder	1.25	2
George A. Swehla*	2- 1-44	Radial Drill Operator	1.05	2
Robert A. R. Morris	2- 2-44	Assembler	1.00	2
Lucious E. Converse	2- 2-44	External Grinder	1.00	2
Leonard F. Abels	2- 3-44	Assembler .....	.95	2
Harvey G. Cromwell	2- 3-44	Machinist	1.10	2
J. G. Gottloeb	2- 3-44	Grinder	1.20	2
Linda M. Lybeck	2- 4-44	Radial Drill Operator .....	.85	2
T. N. Hayward	2- 4-44	Assembler	1.00	2
Earl R. Donat	2- 7-44	Milling Machine Operator	1.20	2
Norris C. Dahl	2- 7-44	Milling Machine Operator	1.00	2
William A Ray	2- 7-44	Assembler .....	.90	2
Paul R. Burt	2- 7-44	Toolmaker	1.35	2
Robert Kurkowski	2- 7-44	Buffer	1.00	2
Matthew J. Sauter	2- 7-44	Assembler .....	.85	2
P. N. Casanta	2- 8-44	Assembler .....	.90	2
Lavern Tudor	2- 8-44	Assembler .....	.90	2
H. C. Arell	2- 8-44	Grinder	1.00	2

* Rehired—Returned from leave of absence.

(Testimony of Emmett J. Sullivan.)

Board's Exhibit No. 4—(Continued)

Name	Date Hired	Classification	Rate	Plant
Robert Hoffman	2- 9-44	Test Stand Mechanic	1.00	2
Max Pecarsky	2- 9-44	Tool and Cutter Grinder	1.30	2
C. A. Florkosky	2- 9-44	Radial Drill Operator .....	.90	2
Alex Bohachef	2-14-44	Boring Machine Operator .....	.90	2
Joseph Wyllie	2-15-44	Milling Machine Operator .....	.85	2
Robert J. March	2-15-44	Boring Machine Operator	1.00	2
Ray C. Drumheiser	2-16-44	Radial Drill Operator .....	.90	2
William Higson	2-17-44	Toolmaker	1.25	2
Oscar Puckett	2-21-44	Milling Machine Operator	1.20	2
William E. March	2-21-44	Radial Drill Operator	1.00	2
Ray B. Carter	2-25-44	Radial Drill Operator .....	.95	2
A. J. Berman	2-25-44	Radial Drill Operator	1.00	2
Salvatore Gennuso	2-27-44	Grinder	1.25	2
Afton B. Jones	2-28-44	Radial Drill Operator	1.00	2
Leo F. Munkachy	2-28-44	Surface Grinder	1.00	2
Jack S. Johnson	2-28-44	Assembler .....	.85	2
Louis Zimman	2-28-44	Engine Lathe Operator	1.20	2
Norman E. Walker	3- 1-44	Boring Machine Operator	1.15	2
Carl E. Guillemin	3- 2-44	Assembler .....	.90	2
Umberto Battinelli	3- 3-44	Internal Grinder	1.10	2
Jas. W. Rising	3- 3-44	External Grinder .....	.95	2

(Testimony of Emmett J. Sullivan.)

Board's Exhibit No. 4—(Continued)

Name	Date Hired	Classification	Rate	Plant
Paul C. Rand	3- 6-44	Assembler .....	.95	2
John A. Gallian	3- 6-44	Assembler .....	.95	2
R. H. Haakinson	3- 6-44	Milling Machine Operator	1.00	2
Ralph H. Fox	3- 6-44	Milling Machine Operator	1.00	2
Alfred Thurston	3- 6-44	Grinder	1.00	2
Richard Poe*	3- 6-44	Grinder	1.30	2
George Haffron	3-10-44	Assembler .....	.90	2
Harry McLaurin	3-10-44	Assembler .....	.90	2
David Kapean	3-10-44	Grinder	1.25	2
Dennis Moorehead	3-14-44	Assembler .....	.90	2
Daniel Clendenmin	3-15-44	Assembler .....	.90	2
Walter A. Nock	3-17-44	Milling Machine Operator	1.10	2
Harley Gatlin	3-17-44	Assembler .....	.95	2
Chas. L. LeMasters	3-17-44	Assembler .....	.95	2
William F. Neville	3-20-44	Assembler .....	.90	2
Allan P. Dearth	3-20-44	Assembler	1.00	2
Fred Ungerland	3-20-44	Assembler .....	.90	2
William S. Hope	3-20-44	Milling Machine Operator	1.00	2
Jas. S. Langlais	3-21-44	Assembler	1.00	2

* Relieved—Returned from leave of absence.

(Testimony of Emmett J. Sullivan.)

Board's Exhibit No. 4—(Continued)

Name	Date Hired	Classification	Rate	Plant
John C. Old	3-21-44	Grinder	1.00	2
Ernest White	3-21-44	Radial Drill Operator .....	.85	2
Lester Daniels	3-21-44	External Grinder	1.00	2
Clarence E. Greth	3-22-44	Machinist	1.05	2
August Casanova	3-23-44	Milling Machine Operator .....	.95	2
Wayne E. Faylor	3-23-44	Milling Machine Operator	1.00	2
A. Stark Oliver	3-23-44	Buffer and Polisher .....	.95	1
Mildred Felix	3-23-44	Radial Drill Operator .....	.85	2
Fred C. Krueger	3-24-44	Radial Drill Operator .....	.90	2
William Billington	3-24-44	External Grinder	1.10	2
John Gregory	3-24-44	Buffer	1.00	2
Harold R. Bressette	3-27-44	Grinder	1.15	2
Robert J. Candy	3-29-44	Assembler .....	.85	2
Henry P. Beedon	3-29-44	External Grinder	1.00	2
Lester D. Yates	3-29-44	Machinist	1.25	1
John D. Newhouse	3-30-44	Test Operator .....	.95	2
Fred W. Cindel	3-30-44	Assembler .....	.95	2
Robert O. Shepard	3-31-44	Radial Drill Operator .....	.95	2
William R. Daubenberger	4- 3-44	Buffer and Polisher .....	.90	2
Edwin C. Still	4- 3-44	Buffer and Polisher .....	.90	1
Frank L. Zamfino	4- 3-44	Grinder	1.00	2

(Testimony of Emmett J. Sullivan.)

Board's Exhibit No. 4—(Continued)

Name	Date Hired	Classification	Rate	Plant
William J. Blankenship	4- 3-44	Assembler .....	.95	2
Louis Hamlin	4- 3-44	Machinist	1.25	1
Acie Bratton	4- 3-44	Radial Drill Operator .....	.95	2
Walter H. Chandler	4- 5-44	Test Mechanic	1.10	2
Earl R. Warne	4- 6-44	Radial Drill Operator .....	.90	2
Carmen Shandra	4- 7-44	Metalizer .....	.95	2
Bascom Griffin*	4-10-44	Boring Mill Operator	1.20	2
Angelina Griffin*	4-10-44	Internal Grinder .....	.95	2
Abe Smith	4-10-44	Niteriding Machinist .....	.85	2
Alfred R. Vallory	4-11-44	Radial Drill Operator .....	.90	2
Walton H. Cobb	4-12-44	Sub-Assembler .....	.85	2
Blaine H. Vlier, Jr.	4-12-44	Sub-Assembler .....	.90	2
Stanley W. Farrar	4-12-44	Niteriding Machinist .....	.90	2
Chas. W. Cole	4-12-44	Radial Drill Operator .....	.90	2
John Matteo	4-12-44	External Grinder	1.20	2
Wallis W. Nicholls	4-13-44	Tool Room Foreman	1.50	2
Harry R. Bryan	4-13-44	Sub-Assembler .....	.85	2
Joe Arell*	4-13-44	Internal Grinder	1.00	2
Russell R. McKowin	4-14-44	Surface Grinder	1.15	1
Lee Jay Casler	4-17-44	Radial Drill Operator .....	.95	2
Oscar M. Annis	4-20-44	Assembly Wash-up Man .....	.85	2

* Rehired—Returned from leave of absence.

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-A

PERSONNEL SUMMARY AS OF JULY 31, 1943

		Male	Female
Employees Shop #1.....	228		
Employees Shop #2.....	164	Hirings	22 10
Employees Office #1.....	115	Quits	12 3
Employees Office #2.....	44	Discharges	5 1
_____		Lay-offs	0 1
Total Employees	551	Leaves of Absence	3 2
_____		Military Separa-	
Productive Employees		tions	0
Shop #1	178	Deceased	1
Productive Employees		_____	
Shop #2	98	Non-Productive Em-	
_____		ployees Shop #1.....	49
Total Productive	276	Non-Productive Em-	
_____		ployees Shop #2.....	67
Total Male Employees...	413	Non-Productive Em-	
Total Female Employees	138	ployees Office #1.....	115
Physically Handicapped	11	Non-Productive Em-	
Aliens	6	ployees Office #2.....	44
Negroes	0	_____	
Minors	1	Total Non-Productive	
Entered Armed Services..	0	Employees	275
_____		_____	
Productive Males	240	Non-Productive Males ...	173
Productive Females	36	Non-Productive Females..	102
_____		_____	
Total Productive	276	Total Non-Productive ...	275
_____		_____	

LABOR TURNOVER RATE..... 7.3%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-B

PERSONNEL SUMMARY AS OF AUGUST 31, 1943

			Male	Female
Employees Shop #1.....	212			
Employees Shop #2.....	186	Hirings	32	11
Employees Office #1.....	106	Quits	28	14
Employees Office #2.....	42	Discharges	5	0
	—	Lay-offs	1	1
Total Employees	546	Leaves of Absence	3	1
		Military Separa-		
Productive Employees		tions	2	
Shop #1	132	Others	0	
Productive Employees				
Shop #2	74	Non-Productive Em-		
	—	ployees Shop #1.....	80	
Total Productive	206	Non-Productive Em-		
		ployees Shop #2.....	112	
Total Male Employees ...	418	Non-Productive Em-		
Total Female Employees	128	ployees Office #1	106	
Physically Handicapped	11	Non-Productive Em-		
Aliens	6	ployees Office #2	42	
Negroes	0			
Minors	1	Total Non-Productive		
Entered Armed Services	2	Employees	340	
Productive Males	180	Non-Productive Males	238	
Productive Females	26	Non-Productive Females ..	102	
Total Productive	206	Total Non-Productive	340	

LABOR TURNOVER RATE..... 11.4%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-D

PERSONNEL SUMMARY AS OF OCTOBER 31, 1943

			Male	Female
Employees Shop 1	206			
Employees Shop 2	240	New Hires	38	17
Employees Office 1	100	Rehires	6	3
Employees Office 2	39	Quits	10	11
		Discharges	5	0
Total Employees	585	Lay-offs	7	0
		Leaves of Absence	5	1
Productive Employees		Military Separa-		
Shop 1 114 Shop 2 124		tions	7	0
		Others	1	0
Non-Productive Employees				
Shop 1 Shop 2 Offices		Total Male Employees....	451	
93 116 139		Total Female Employees	134	
		Physically Hanicapped	12	
Productive Males	200	Aliens	6	
Productive Females	32	Foreign Born	47	
		Negroes	0	
Total.....	232	Minors	1	
Non-Productive Males	251	Current Month Total.....	585	
Non-Productive Females	102	Preceeding Month Total..	568	
Total.....	353	Gain.....	17	

LABOR TURNOVER RATE..... 8.5%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-E

PERSONNEL SUMMARY AS OF NOVEMBER 30, 1943

				Male	Female
Employees Shop 1	198				
Employees Shop 2	290	New Hires	47	16	
Employees Office 1	97	Rehires	6	0	
Employees Office 2	41	Quits	8	10	
		Discharges	3	0	
Total Employees	626	Lay-offs	9	0	
		Leaves of absence	2	0	
Productive Employees		Military Separa-			
Shop 1 124 Shop 2 149		tions	3	0	
		Others	0	0	
Non-Productive Employees					
Shop 1 Shop 2 Offices		Total Male Employees	487		
74 141 138		Total Female Employees	139		
		Physically Handicapped	14		
Productive Males	233	Aliens	5		
Productive Females	40	Foreign Born	47		
		Negroes	0		
Total.....	273	Minors	1		
Non-Productive Males	254	Current Month Total.....	626		
Non-Productive Females	99	Preceding Month Total..	585		
Total.....	353	Gain.....	41		

LABOR TURNOVER RATE..... 8%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-F

PERSONNEL SUMMARY AS OF DECEMBER 31, 1943

				Male	Female
Employees Shop 1	201				
Employees Shop 2	337	New Hirings	57	15	
Employees Office 1	104	Rehires	4	5	
Employees Office 2	36	Quits	18	8	
	—	Discharges	10	0	
Total Employees	678	Lay-offs	0	0	
		Leaves of Absence	2	0	
Productive Employees		Military Sapara-			
Shop 1 124 Shop 2 191		tions	0	0	
		Others	0	0	
Non-Productive Employees					
Shop 1 Shop 2 Offices		Total Male Employees....	526		
77 146 140		Total Female Employees	152		
		Physically Handicapped	14		
Productive Males	267	Aliens	5		
Productive Females	48	Foreign Born	53		
	—	Negroes	0		
Total.....	315	Minors	0		
Non-Productive Males	259	Current Month Total	678		
Non-Productive Females	104	Preceding Month Total....	626		
	—				
Total.....	365	Gain.....	52		

LABOR TURNOVER RATE..... 6.2%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-G

PERSONNEL SUMMARY AS OF JANUARY 31, 1944

Employees Shop 1	188				Male	Female
Employees Shop 2	344	New Hires	62	17		
Employees Office 1	103	Rehires	4	2		
Employees Office 2	43	Quits	31	9		
	—	Discharges	7	3		
Total Employees	678	Lay-offs	0	1		
		Leaves of Absence	2	2		
Productive Employees		Military Separa-				
Shop 1 121 Shop 2 209		tions	5	0		
		Others	0	0		
Non-Productive Employees						
Shop 1 Shop 2 Offices		Total Male Employees....	530			
67 135 146		Total Female Employees	148			
		Physically Handicapped	14			
Productive Males	280	Aliens	7			
Productive Females	50	Foreign Born	57			
	—	Negroes	0			
Total Productive	330	Minors	0			
		Veterans	18			
Non-Productive Males	250					
Non-Productive Females	98	Current Month Total....	678			
	—	Preceeding Month Total..	652			
Total Non-Productive	348					
		Gain.....	26			

LABOR TURNOVER RATE..... 10.9%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-H

PERSONNEL SUMMARY AS OF FEBRUARY 29, 1944

Employees Shop 1	185				Male	Female
Employees Shop 2	381			New Hires	73	20
Employees Office 1	105			Rehires	4	2
Employees Office 2	47			Quits	31	7
	—			Discharges	8	0
Total Employees	718			Lay-offs	5	1
				Leaves of Absence	0	1
Productive Employees				Military Separa-		
				tions	2	0
Shop 1 120 Shop 2 234				Others	0	0
Non-Productive Employees				Total Male Employees....	557	
				Total Female Employees	161	
Shop 1 65 Shop 2 147 Offices 152				Physically Handicapped	12	
				Aliens	8	
Productive Males	294			Foreign Born	65	
Productive Females	60			Negroes	0	
	—			Minors	1	
Total Productive	354			Veterans	27	
Non-Productive Males	263			Current Month Total	718	
Non-Productive Females 101				Preceding Month Total..	678	
	—					
Total Non-Productive	364			Gain.....	50	

LABOR TURNOVER RATE..... 8.5%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-I

PERSONNEL SUMMARY AS OF MARCH 31, 1944

			Male	Female
Employees Shop 1	190			
Employees Shop 2	430	New Hires	90	29
Employees Office 1	106	Rehires	7	1
Employees Office 2	51	Quits	36	12
-----		Discharges	9	1
Total Employees	777	Lay-offs	2	0
-----		Leaves of Absence	3	5
Productive Employees		Military Separa-		
Shop 1 124 Shop 2 268		tions	3	1
-----		Others	0	0
Non-Productive Employees		-----		
Shop 1 Shop 2 Offices		Total Male Employees...	606	
66 162 157		Total Female Employees	171	
-----		Physically Handicapped	13	
Productive Males	326	Aliens	9	
Productive Females	66	Foreign Born	73	
-----		Minors	6	
Total Productive	392	Negroes	0	
-----		Veterans	36	
Non-Productive Males	280	-----		
Non-Productive Females	105		Male	Female
-----		Total Accessions	97	30
Total Non-Productive	385	Total Terminations	49	19
-----		-----		
Current Month Total	777			
Preceeding Month Total	718			
		Gain.....	59	
-----		-----		

LABOR TURNOVER RATE..... 9.6%

(Testimony of Emmett J. Sullivan.)

BOARD'S EXHIBIT No. 5-J

PERSONNEL SUMMARY AS OF APRIL 30, 1944

			Male	Female
Employees Shop 1	199			
Employees Shop 2	450	New Hires	67	27
Employees Office 1	102	Rehires	5	3
Employees Office 2	50	Quits	46	12
	—	Discharges	7	2
Total.....	801	Lay-offs	0	0
		Leaves of Absence	6	2
Productive Employees		Military Separa-		
Shop 1 128 Shop 2 275		tions	3	0
		Others	0	0
Non-Productive Employees				
Shop 1 Shop 2 Offices				
71 175 152		Total Male Employees....	615	
		Total Female Employees	186	
Productive Males	324	Physically Handicapped	13	
Productive Females	75	Aliens	9	
Non-Productive Males ...	291	Foreign Born	73	
Non-Productive Females	111	Minors	3	
		Negroes	0	
Current Month Total	801	Veterans	37	
Preceding Month Total	777			
	—	Total Accessions	102	
Gain.....	24	Total Terminations	78	

LABOR TURNOVER RATE..... 10.2%

Q. (By Mr. Esterman): Mr. Sullivan, in your capacity as personnel director it was one of your duties, was it not, to see that in connection with the company's efforts to obtain help, from time to time, that certain advertisements were placed in newspapers under help wanted classifications, isn't that correct?

A. Yes, sir.

(Testimony of Emmett J. Sullivan.)

Q. Can you say, from your own recollection, when the company commenced, if you know, to advertise for help in the papers? Or if they were doing so when you came with them, say so.

A. Yes, sir, they were; and I continued it.

Q. You continued it?

A. Yes, from time to time.

Q. Is it or is it not a fact that the company has continuously, since you have been with the company, advertised for help in the various Valley papers in the Southern [58] California area?

A. Yes. There were certain periods where we cancelled all ads due to having an adequate number for the present work.

Q. What periods do you refer to?

A. I can't state just offhand. There were periods of several weeks where we had enough people or where we had some bugs in the tooling to iron out, where we didn't do any advertising.

Q. Well, what is your recollection as to the last time you brought about such cancellation, when was the last time you cancelled ads?

A. We cancelled ads—the last time when I changed my office and put another man in the hiring capacity he cancelled all advertising for a period of a week or ten days, before he started running any more at all.

Q. You mean by that that about six weeks ago, when you became industrial relations manager.—

A. That is correct.

(Testimony of Emmett J. Sullivan.)

Q. ———at that time you instructed him to cancel all ads for a week or so?

A. I didn't actually instruct him. He was instructed by the manager of manufacturing.

Q. Do you know, in fact, whether the ads were cancelled?

A. I just understood we weren't running any more ads for a period of time. [59]

Q. Now, are you able to state, from your recollection, any other times when such cancellations were effected or ordered by or through you prior to that time?

A. I used my own discretion on that. I would cancel out ads for various classifications. We always had ads running for engineers, research and mechanical engineers. We had ads running continuously for those people. But for other groups of people it was spasmodic, run some and then we would quit running.

Q. You have, from time to time, advertised for machinists, have you not, for both shifts and both plants?

A. Machine operators mostly.

Q. Well, I asked you about machinists.

A. We might have had the word "machinist" in some of them.

Q. Do you distinguish between machinist and machine operator?

A. Oh, yes.

Q. Would you indicate what the distinction is?

A. A machine operator operates various types of machine tools. Usually he is one kind of an operator. He is an engine lathe operator or turret

(Testimony of Emmett J. Sullivan.)

lathe operator or a milling machine operator and knows nothing about the other machines. Whereas, a machinist, as such, should be able to operate various machines and set them up. It is a high class, it is on a par with toolmakers.

Q. You advertised for machine operators and you didn't [60] specify any particular machines; did you?

A. Yes, we did, in a good many instances. Usually the Bullard operators, we always mentioned that. If we advertised for Bullard operators we would use that name.

Q. You are not saying, are you, in every instance where you advertised for machine operators you mentioned the machine you wanted the person for?

A. Not in every instance.

Q. You did in some instances advertise for machine operators?

A. Yes.

Q. Isn't it a fact if a machinist applied, in response to a job for machine operator, you wouldn't turn him away?

Mr. Collins: I object to that as calling for a conclusion of the witness. It depends on the circumstances of the occasion. You might have to have somebody for some time and might not have to have them for another.

Mr. Esterman: I will withdraw the question.

Q. (By Mr. Esterman): A machinist is a machine operator; is he not?

A. He must know how to operate machines. He

(Testimony of Emmett J. Sullivan.)

could be a bench machinist and wouldn't do any machine operating.

Q. Isn't the distinction you made—and I am trying to understand it the way you stated—between machine operator and machinist, is a machinist is apt to be qualified to [61] operate more machines than a machine operator?

A. That is correct.

Q. A fellow that works on a particular machine, let's say, a lathe, could be a machine operator in that sense and yet not know anything about the other equipment?

A. That is right.

Q. Or he might know how to operate several machines; isn't that right?

A. If he operated more than two or three he would call himself a machinist so he could get the rate.

Q. I will accept that. I take it, from your statements, that in your experience, at least, it is harder to get machinists, as you have described them, than it is a machine operator?

A. Yes.

Q. Now, a milling machine operator is a designation, is it not, for one kind of machine operator?

A. That is right.

Q. I will ask you this, Mr. Sullivan: In your capacity as personnel manager wasn't it part of your job and part of your duties either to ascertain or to have ascertained on behalf of the company the particular skills and qualifications of the persons who came to the plant, so they might be best fitted

(Testimony of Emmett J. Sullivan.)

to the production needs and requirements of the company? [62]

A. That was usually obtained in an interview, final interview between the prospective employee, and in many cases, the superintendent or the night foreman or one of the top supervisory people. We would let them in to talk to their people, in many cases.

Q. It is one of the principal functions of the personnel department; is it not?

A. That is correct.

Q. Will you refer, Mr. Sullivan, to your personnel file on Mr. James Davis, and at the same time refer to your replacement schedule data with respect to the same worker, James M. Davis, and see if you can find any record of an occupational certification issued by the company on or about the first week in August, 1943, or any record relating to that subject on or about that date?

A. James M. Davis is listed on our replacement schedule as a toolmaker.

Q. Well, now, going on from there, do you have any records which show when and under what conditions you made requests for deferments with respect to Mr. Davis, with the Selective Service?

A. We requested more than six months' deferment for him.

Q. When did you first make such a request? Do your records show that? Do your records show any of the requests for deferments on the dates?

(Testimony of Emmett J. Sullivan.)

A. This is the last replacement schedule as of last December. It goes in every six month. I didn't bring the one before this with me.

Mr. Esterman: May we go off the record a moment, Mr. Examiner?

Trial Examiner Spencer: Yes.

(Discussion off the record.)

Trial Examiner Spencer: On the record.

Mr. Esterman: I am going to ask the company if they will stipulate to the following matters:—There are three—first, if it is not a fact that on or about August 5, 1943, the company, in a form entitled “Selective Service System Occupational Certification”, and signed by Mr. Sullivan, the witness, did not advise local board 550, Midland, Texas, that Mr. James M. Davis was on that date employed by the company as a toolmaker and grinder; that further, in response to the question, “Give a brief description of his duties”, the company filled in the following, over the signature of Mr. Sullivan: “Specializes in the constructon of repair, maintenance and calibration of machine shop tools, jigs, fixtures and instruments”;

Second, I will ask the company to stipulate if it is not a fact that on or about November 8, 1943, the company, by Mr. Sullivan, the witness, as personnel manager, in a document, signed by him and acknowledged and sworn to by him [64] did advise the same board, which I have just described, that in a selective service system affidavit, relating to

(Testimony of Emmett J. Sullivan.)

the occupational classification of Mr. James M. Davis, that the title of his job on that date was toolmaker; that the duties actually performed by him were as follows: "Specializes in the construction, repair, maintenance and calibration of machine shop tools, jigs, fixtures, and instruments, operating various machine tools and performing other highly skilled work such as laying out work, fitting and assembling parts."

And further, continuing with the same affidavit, that the company stated that the average weekly rate of pay for Mr. Davis was \$1.15 an hour. And in response to the question, "How long will it take to replace this employee" the company answered "More than six months."

And in response to the question "What specific steps have been taken to secure or train a replacement for this registrant" the company replied "Replaceable only out of industry."

Third, I will ask the company to stipulate if it is not a fact that on January 1, 1944, in a certification similar to the ones I have just described, to the same draft board 550, in Midland, Texas, the company did not, in fact, certify, with the approval of the Army Air Corps, that Davis on that date was a toolmaker; that occupational deferment was being [65] requested "In accordance with an attached Selective Service form (42A); that the actual duties performed by Davis were as follows:

"Specializes in the construction, repair, main-

(Testimony of Emmett J. Sullivan.)

tenance and calibration of machine shop tools, jigs, fixtures, and instruments operating various machine tools and performing other highly skilled work such as laying out work, fitting and assembling parts.”

Further, that Davis’ pay rate on that date, January 5, 1944, was \$1.15; that Davis could be replaced only out of industry; and further, it would take six months to replace him.

I have completed my request for stipulation, and I will add this statement: That the date which I have just read into the record was gathered by me personally, counsel for the board, from the original sources, and that if counsel will not stipulate to the accuracy of that —

Mr. Collins: Wait a minute. I have talked to Mr. Sullivan since you read those things, and we will stipulate to it. He hasn’t, of course, any definite recollection on it, but he says substantially that he recalls signing it. I will stipulate to the fact. I reserve my objection on the ground it is incompetent, irrelevant, and immaterial.

Mr. Esterman: I take that to mean, Mr. Collins, —correct me if I am wrong—you don’t question the authen- [66] ticity of the information? [67]

Mr. Esterman: I will ask the company at this time if they won’t stipulate that on Thursday, March 9, 1944, the company did not, in fact, advertise in the Valley Times, which is a paper published for general circulation, in what we call the San Fer-

(Testimony of Emmett J. Sullivan.)

nando Valley area; and that the advertisement in that paper and on that date was as follows:

“Machine operators, inspectors, engine assembly men, 60-hour week, Kinner Motors, Inc., 635 West Colorado, Glendale, availability certificate required”?

Mr. Collins: I won't stipulate to that, Mr. Examiner. I have discussed this stipulation with counsel. I will stipulate that the ad was in there, but the true facts, as I am sure the evidence will show here, is that sometimes [69] these ads were run after they were told to be stopped and sometimes subordinates were told to stop them and they didn't do it until the next issue. I don't think the matter has any relevancy. As I told counsel, if he has the paper I will stipulate the ad appeared that day. I certainly won't stipulate that under all the circumstances of how they kept these ads going back and forth, sometimes, you know, you send in a cancellation and they don't check it or some subordinate has been told to cancel —

Trial Examiner Spencer: As I understand, you are only asking counsel to stipulate that advertisement appeared in this periodical, as stated, on a certain date?

Mr. Esterman: That is right.

Mr. Collins: That is correct. I didn't understand him to say that. [70]

ALBERT SWANSON,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): Your name is Albert Swanson? A. Yes, sir.

Q. Will you please talk up so I can hear you? [79]

A. Yes, sir.

Q. That is better. Where do you live, Mr. Swanson? A. 3087 North Fair Oaks, Altadena.

Q. Where do you work, Mr. Swanson?

A. Standard Machine Works, 88 De Lacey, in Pasadena; North De Lacey.

Q. Pasadena? A. That is right.

Q. What work do you do there?

A. Toolmaker and jig designer, all-around machinist, I believe, is more proper.

Q. All-around machinist is what you said?

A. Yes.

Q. Thank you. Before you worked for Standard Machine Works you were employed, were you not, by Kinner Motors in Glendale? A. Yes, sir.

Q. Over what period were you so employed by Kinners?

A. On or about the 16th of November, 1942.

Q. Until?

A. Until on or about the 18th of January, 1944.

Q. When you worked for Kinner's did you work in any particular plant? A. Yes; plant 2.

(Testimony of Albert Swanson.)

Q. What work did you do when you were there?

[80]

A. Inspection.

Q. Did you work on one shift all the time?

A. No.

Q. What was the situation?

A. Day shift to about the 7th of October, 1943.

Q. What happened then?

A. Then I was transferred over or I was asked to go on the night shift as an inspector.

Q. Someone in the company asked you if you would? A. Yes.

Q. And you went? A. Yes.

Q. From then until you left you were employed in Plant 2 on the night shift?

A. That is right.

Q. From October, 1943, until January, 1944; is that correct? A. Yes, sir.

Q. Now, did you know a gentleman named Howard Sharrar? A. Yes, sir.

Q. S-h-a-r-r-a-r? I think that is right.

A. I don't think so.

Mr. Esterman: Is that incorrect, Mr. Sullivan?

Mr. Sullivan: Sir?

Trial Examiner Spencer: Is that spelling incorrect?

Mr. Sullivan: No. [81]

Mr. Esterman: Thank you.

Trial Examiner Spencer: Now, what was the answer to the question?

(The record was read.)

(Testimony of Albert Swanson.)

Q. (By Mr. Esterman): At the time you went on nights what was Mr. Sharrar doing? He was employed by the company?

A. He was employed by the company.

Q. What was he doing at the time you went on nights?

A. As far as I know he was a head man or assistant foreman in the toolroom.

Q. At that time? A. At that time.

Q. Was his position changed at any time afterwards?

A. At the same night as I went on afternoons he became the night superintendent on the night shift.

Q. That was some time —

Trial Examiner Spencer: Just a minute. I don't understand.

Mr. Esterman: I was about to ask the witness.

The Witness: The swing shift.

Q. (By Mr. Esterman): When you talk about going on afternoons, you are referring to the swing shift; are you not? A. Yes.

Q. Which starts at around 6:00 p. m.?

A. That is right. [82]

Q. And that is what you mean by going on afternoons.

A. Going on afternoons to the swing shift, I guess they call it.

Q. As distinguished from the day shift that starts when, if you know?

A. The day shift is 7:00 o'clock in the morning?

Q. Until?

(Testimony of Albert Swanson.)

A. Until 5:30, at the time I was there, and then the afternoon swing shift starts at 5:30, until 3:30.

Q. Of the morning of the next day?

A. Yes.

Q. That is what you meant by afternoon?

A. Yes.

Trial Examiner Spencer: Mr. Sharrar was what at the time you went on the afternoon?

The Witness: He was the night superintendent.

Q. (By Mr. Esterman): At or about the time you were switched he became the night superintendent, is that what you said? A. Yes, sir.

Q. Thank you. During the course of your work on that shift, and during the period between October and the time you left in January of this year, did you have occasion to talk with Mr. Sharrar at different times? A. Yes, sir.

Q. Did you see a good deal of each other during [83] that period? A. Yes; every night.

Q. You talked with him pretty frequently; did you? A. That is right.

Q. Did you become friendly with him?

A. Quite friendly.

Q. Now, I call your attention to the fact that there was a hearing before the Labor Board in connection with a case involving Kinner Motors, this company, held here in Los Angeles on four successive dates, December 13, 15, 16 and 17, 1943. I am calling your attention to that and asking you to have that date in mind. That hearing, as I just indicated, was concluded on the 17th of December, 1943.

(Testimony of Albert Swanson.)

Now, with respect to that period between December 17, 1943, and the time you terminated, January 18, 1944, did you have any conversations with Mr. Sharrar on the subject of the Labor Board hearing?

A. Not directly. He expressed himself that he was very—well, in the words he was quite fatigued and that it was a little bit too much for him to attend to the hearing and also new on the job.

Q. You are telling us what he said about the hearing? A. Yes.

Q. I see. Well, did you have any discussions about the hearing itself?

A. Not directly, no. [84]

Q. Well, what do you mean by “not directly”?

A. What I mean is this: That we didn’t discuss the hearing, what they were doing at the hearing, what was going on at the hearing; just that he had been at the hearing and he was tired.

Q. That is what you meant by “indirectly”?

A. Yes.

Q. By not directly? A. Yes, that is right.

Q. Did you have any conversations with him during that period on the subject of unions?

A. Yes.

Q. Did you have more than one such conversation? A. About twice.

Q. Where was each conversation had, if you recall?

A. At his office or in Mr.—the office of the day superintendent.

(Testimony of Albert Swanson.)

Q. Was anyone else present at these conversations you are telling me about?

A. No, there wasn't.

Q. Just you and Sharrar?

A. That is right.

Q. I am asking you only to tell us what conversation on the subject of union you had. Do you understand that? A. No. [85]

Q. Will you tell us what was said by him and what was said by you in those conversations?

A. Well, he said to me that the A. F. of L. union wanted to get in and organize the Kinner Motors, the employees, and he thought it was insufficient as long as we had an association in the shop. So he didn't see the necessity of having the A. F. of L. organize in the Kinner's. He was very much opposed to the A. F. of L. activity in Kinner's.

Q. Is that what he said?

A. That is what he said.

Q. Was there any discussion of A. F. of L. men in the shop between you and Mr. Sharrar?

A. Yes. He said that there was one or two in the shop that were quite active in the A. F. of L. organization, and he didn't quite like the idea of having the men try to organize the A. F. of L. in there.

Q. Did he say whether he would do anything about it or not?

A. No, he didn't. But I did. I said like this, I said, "Why don't you change the men over to less

(Testimony of Albert Swanson.)

pleasant work and probably you may induce them to quit?" [86]

Q. You said that to him?

A. I said that to him.

Trial Examiner Spencer: Did you say less pleasant work?

The Witness: Yes.

Q. (By Mr. Esterman): You said that to him?

A. Yes. I don't know if that is English or not.

Q. Go ahead and use your own language, Mr. Swanson. You don't have to be a lawyer to testify.

A. Then he said he didn't have authority to do so; and I believe that conversation ended at that time.

Q. In discussing these A. F. of L. men in the shop, did he mention any by name?

A. Yes, he mentioned Mr. Salter. He was quite active in the A. F. of L. And then at the same time he said that Salter did not attend to his work the way he should have, he didn't work steady. He took time off whenever he pleased and he wanted to dismiss him on that account. Also he said at times he was very active in the A. F. of L.

Q. Have you told us all you can remember now of your conversations with Mr. Sharrar on that subject? A. Yes, I have.

Q. Now, you are here, are you not, in response to a subpoena? A. Yes, I am. [87]

Q. Of what plant was Sharrar night foreman?

A. Plant 2.

Q. Plant 2? A. Yes.

(Testimony of Albert Swanson.)

Q. Was Mr. Salter working in Plant 2 at that time? A. Yes, he was.

Q. Were any other A. F. of L. men mentioned by name? A. No. [88]

LESLIE M. DAYHOFF,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Esterman): You are Mr. Leslie M. Dayoff? A. That is right.

Q. Where do you live, Mr. Dayhoff?

A. 7617 Santa Monica Boulevard.

Q. You are here in response to a subpoena; are you not? A. Yes, sir.

Q. You are employed by Kinner Motors at this time? A. Yes, sir.

Q. Glendale? A. Yes, sir.

Q. How long have you worked there?

A. Since about July, 1941.

Q. Has your employment with the company been continuous? A. All but about two weeks.

Q. What happened then?

A. I left the company for another job and stayed two [89] weeks, and come back again.

Q. Approximately when was that?

A. That was, I think that was around May, '42.

(Testimony of Leslie M. Dayhoff.)

I am not sure about that date, but it is right around in there.

Q. Now, what plant do you work in?

A. Plant 1.

Q. On what shift? A. Swing shift.

Q. Is that the night shift, what we call the night shift here? A. Yes.

Q. What work do you do? A. Machinist.

Q. Do you know whether or not you are an A machinist, B machinist or a C machinist?

A. Well, I don't know what I am rated at. I am a general all around machinist.

Q. Have you ever heard yourself referred to as an A or B or C machinist? A. I haven't, no.

Trial Examiner Spencer: What is your present rate of pay?

The Witness: \$1.30 is the rate, with a 5 cent bonus for nights.

Q. (By Mr. Esterman): Now, during the time, until February [90] of 1944, you were acquainted, were you not with Davis, Gilpin and Swope, who worked in the tool room on the night shift?

A. Yes, sir.

Q. You know they were terminated some time in February? A. Yes, sir.

Q. Were you working at the time they or any of them were terminated?

A. No, I was sick with the flu.

Q. For what period, if you recall, were you away from the plant?

(Testimony of Leslie M. Dayhoff.)

A. I think I was away from the plant from about February 5th to—no, February 17th to March 5th.

Q. About two weeks or thereabouts?

A. Somewhere around there. I think it was about fifteen to seventeen days; I am not sure.

Q. At any rate, you came back from an illness around the 5th of March; is that right?

A. Yes, sir.

Q. Did you learn that Davis, Gilpin and Swope had been terminated?

A. When I came back, yes sir.

Q. They weren't there and you found they had been discharged?

A. They weren't there and I heard that about the first [91] thing when I came back.

Q. Who was your foreman in March of 1944?

A. Brian Johnson.

Q. Is that Brian, B-r-i-a-n? A. Yes.

Q. Brian C. Johnson?

A. Brian C. Johnson, yes.

Q. What is he foreman of, if you know?

A. Machine shop.

Q. On the night shift?

A. On the night shift.

Q. Was he the foreman of the machine shop on the night shift when you were employed in July, 1941? A. Yes. [92]

Q. (By Mr. Esterman): When you came to work for the company in July, 1941, you testified you went into the machine shop on the night shift; is that right? A. That is right.

(Testimony of Leslie M. Dayhoff.)

Q. Did you report to anyone in particular when you were hired?

A. No, I went into the shop and reported in the shop, and Mr. Davey introduced me to Mr. Johnson and said he was the night foreman.

Q. Mr. Davey said Johnson was the night foreman?

A. Yes.

Q. That was in July, 1941?

A. That was when I first went in.

Trial Examiner Spencer: Is that D-a-v-i-s?

Mr. Esterman: D-a-v-e-y.

Trial Examiner Spencer: Thank you.

Q. (By Mr. Esterman): At that time you understood Mr. Johnson was the night foreman of the machine shop?

A. That is right.

Q. Did anything happen since then that caused you to change your mind or your understanding, so far as Mr. Johnson [93] is concerned?

A. You mean that he wasn't foreman?

Q. That is right.

A. No, I don't think so.

Q. As far as you know he is still the foreman?

A. As far as I know he is. [94]

Q. (By Mr. Esterman): I think you said when you came back on or about March 5th, from your illness, you found that Davis, Gilpin and Swope had been discharged; is that correct?

A. Yes, that is correct.

Q. Calling your attention to the night of your return, that is, the first night you worked, —

A. Yes.

(Testimony of Leslie M. Dayhoff.)

Q. — did you have any conversation with Mr. Johnson about Davis, Gilpin and Swope?

A. Yes, I had a conversation with him; not very long one.

Q. I am just asking if you had one, and you say you did? A. Yes. [98]

Q. Where did you have that conversation?

A. Back toward the back end of the shop.

Q. Is that in Plant 1? A. Plant 1.

Q. That is after you came to work?

A. Yes, sir.

Q. Was anyone else present? A. No.

Q. What was the conversation?

A. Well, I asked him—I think I started the conversation. I think I asked him what he had heard or if he had heard anything about the—we referred to those boys as the Three Musketeers at that time.

Q. Whom did you mean by the Three Musketeers?

A. Davis, Swope and Mr. Gilpin. I asked him about whether he heard anything from them lately, and whether he thought they would get back to work.

Q. Did Johnson say something?

A. No. He says he hadn't heard anything about it. He said he didn't hardly think they would come back to work.

Q. Was anything else said at that time?

A. I think he said Mr. Sullivan came into the shop and wanted the boys to write an affidavit in regard to it. Of course, I wasn't there when that

(Testimony of Leslie M. Dayhoff.)

happened, but that is what he told me, at that conversation. [99]

Q. I am only asking you what was said by you or Mr. Johnson at that time. A. Yes.

Q. Have you recalled everything you can at this time?

A. Well, I think he told me about the affidavit that he wrote, he didn't tell me what he wrote, but he thought that what he did write done himself more harm than anybody else.

Q. I am concerned with the subject of Davis, Gilpin and Swope. Did you discuss those three gentlemen with Mr. Johnson at another time after you came back from our illness?

A. I think I did, yes.

Q. Approximately when was it, if you know?

A. Oh, probably a couple of weeks afterward. I couldn't recall just how soon.

Q. Approximately a couple of weeks after you returned? A. Yes.

Q. Was this conversation between you and Mr. Johnson in the same location?

A. Approximately in the same place.

Q. Plant 1? A. Yes.

Q. Was anyone else present? A. No, sir.

Q. What was the conversation?

A. Well, I can't recall just exactly. He said something [100] about he thought if these three fellows would have been let out in the right way, he thought there wouldn't have been so much trouble about it.

(Testimony of Leslie M. Dayhoff.)

Q. Did he tell you what he meant by the "right way"? A. Well, yes, in a way he did.

Q. You tell us what he said. If he explained that, tell us.

A. He said he thought if he had done it he would have given them some hard job they couldn't do, and they would have an excuse to let them go; or put them in the other plant and give them some kind of a job they couldn't master.

Q. (By Mr. Esterman): Tell us everything you recollect of that discussion.

A. That is about all of that conversation. He just told [101] me that he didn't think they were let out the right way.

Q. That is all you recall at this time?

A. That is all I recall, yes.

Q. When he told you he didn't think they were let out the right way, did he tell you why he thought so?

Mr. Collins: I object to that as leading and suggestive.

Trial Examiner Spencer: Overruled. Did he?

The Witness: What is it?

Trial Examiner Spencer: Read the question.

(The question was read.)

The Witness: Yes, he said when they let them out they went and took their time cards out, and when they came to work their time cards weren't there and the guards wouldn't let them in the shop without a guard following them.

(Testimony of Leslie M. Dayhoff.)

Q. Do you remember any more of that conversation?

A. No, I don't. I don't think there was very much more to it. [102]

Cross Examination

Q. Now, when you came back and you talked to Mr. Brian Johnson, isn't it a fact that these gentlemen, Mr. Davis and Mr. Swope and Mr. Gilpin had filed an application with the War Labor Board for reinstatement?

A. That I don't know. That is what I heard, they did do that. But I don't know.

Q. You spoke to Mr. Brian Johnson about it; didn't you?

A. No, I don't think so, not particular about them filing [107] an application.

Q. Don't you remember that you said something to him about that? Think back. Don't you recall you did? A. No, sir.

Q. Do you remember that you had several talks with Mr. Brian Johnson about this?

Mr. Esterman: When?

Mr. Collins: Well, now, I can only ask the first question, and then find out when.

Q. (By Mr. Collins): You had several conversations? A. Just a couple, yes.

Q. More than a couple; didn't you.

A. No, sir.

Q. Only a couple?

A. About two, I remember of. That is, when him and I was alone.

(Testimony of Leslie M. Dayhoff.)

Q. Did you have other conversations with Mr. Nichols?

A. I never had a conversation with Mr. Nichols.

Q. Did you have any conversation with Mr. Davey? A. Never.

Q. Now, in your conversations with Mr. Brian Johnson, did you tell him you wanted to tell him some things about these boys, that they didn't know at the time their contracts were terminated, but they must know now because of the difficulties that had occurred on the night shift through [108] some of the activities of these boys?

A. I don't quite understand what you mean.

Q. Didn't you tell Mr. Johnson you wanted to tell about some of the things he didn't know about, what those boys had been doing on the night shift?

A. No, sir.

Mr. Esterman: I am going to object unless counsel indicates when these conversations he is asking about took place.

Mr. Collins: These two conversations you questioned him about, and I am cross examining him about?

Trial Examiner Spencer: The witness has answered the question. The answer is no. It may remain on the record. Proceed.

Q. (By Mr. Collins): Didn't you tell him that there had been a great deal of confusion and a great deal of upset among the night employees because of the statements that these boys had been making

(Testimony of Leslie M. Dayhoff.)

to the night employees that they must not buy War Bonds?

A. There was quite a bit said about War Bonds, yes.

Q. Didn't you tell that to Mr. Brian Johnson?

A. Well, I told it to everybody as far as that is concerned; not particular with him alone, no.

Q. Didn't you tell him that production had lagged in the night shift and these boys must not be brought back after the statements they had made to the employees that the em- [109] ployees should not buy War Bonds?

A. I never said anything about production lagging.

Q. What did you say to him about the boys and the statements they had been making in the plant about not buying War Bonds?

Mr. Esterman: I object. The question assumes something not in evidence.

Mr. Collins: This is cross examination.

Mr. Esterman: I understand that.

Mr. Collins: I have a right, on cross examination, to lead him and to ask him any kind of a question I want to about a conversation.

Mr. Esterman: That is quite true. And I agree with counsel. However, I object to the particular question, as the question assumes a fact that is not in evidence; in fact, something which the witness has indicated that didn't happen.

Mr. Collins: I am trying to cross examine him and find out if it was said.

(Testimony of Leslie M. Dayhoff.)

Trial Examiner Spencer: All right. This can go on indefinitely. Pick up that question. I will hear the objection to the question. I am going to object to this continual exchange between counsel. I will hear you on an objection, and if opposing counsel wants to make a response, I will hear that, and then I want you to stop and I will make my ruling.

(The question was read.)

Trial Examiner Spencer: I will ask you this: Did you make any such statement to Johnson or anybody else?

The Witness: I have talked about the War Bond drive and talked about them to the boys.

Trial Examiner Spencer: Did you tell Johnson that?

The Witness: Well, I probably have. Probably I have, but I didn't talk to him direct in these two conversations. I talked to Johnson and everybody in the shop all along about things like that, but I am referring to the direct conversation I had with Johnson alone.

Q. (By Mr. Collins): All right. Let me ask you this: What did you tell Mr. Johnson or others about what these boys were doing about the War Bond drive?

A. Well, they were trying to discourage them.

Mr. Esterman: One moment. The witness was examined on two conversations with Mr. Johnson. Unless this purports to be cross examination on the same conversations, I am going to object. It is not

(Testimony of Leslie M. Dayhoff.)

related to anything we are concerned with in this hearing.

Mr. Collins: Oh, yes, it is related.

Trial Examiner Spencer: Just a minute.

Mr. Collins: I am sorry.

Trial Examiner Spencer: The witness has stated that in this conversation about War Bonds, relative to the [111] activities of these three employees, that his statements didn't occur in private conversations with Mr. Johnson. But he has testified that he has made some statements and I assume that Mr. Johnson may have been present when he made some of those statements.

Is that right?

The Witness: Probably so, yes.

Trial Examiner Spencer: Now, what do you want to get at here, counsel?

Mr. Collins: Here is the point: If the Trial Examiner please, counsel is making a point, or undoubtedly will make a point, or is attempting to make the point these boys, after the employment was terminated by reason of the close down of this particular phase of the business, this night shop crew were not taken back. I propose to show, not only by this witness, but by a good many witnesses, that subsequent—that when the investigation was made, or immediately afterward, when it was a question of their returning, something was disclosed never known to management, that these boys had created a real disturbance in this plant by a

(Testimony of Leslie M. Dayhoff.)

constant unpatriotic attempt to fight the War Bond drive in the plant.

Trial Examiner Spencer: Is that a part of your defense, a reason for refusing to reinstate them?

Mr. Collins: Yes.

Trial Examiner Spencer: We do not strictly limit [112] the cross examination to the scope of the direct. I will let you proceed.

Mr. Collins: All right.

Mr. Esterman: I also would like to add to my prior objection, which hasn't been ruled on, to the question now pending, that the question is vague and indefinite and absolutely not susceptible of an intelligent answer.

Trial Examiner Spencer: Rephrase the question. Get a new question and let's go ahead here.

Q. (By Mr. Collins): What did you say to Mr. Johnson or in the presence of Mr. Brian Johnson about the activities of these boys in connection with the sale of War Bonds?

A. Well, I said they were trying to discourage the War Bond sale, and I didn't believe in it myself.

Q. Did you tell him what they were telling the employees? A. How is that?

Q. Did you say, in that conversation, what these boys were actually saying to the employees about buying War Bonds?

A. They said they were spending their money foolishly, and the War Bonds would not materialize, nobody would ever get their money back from them.

(Testimony of Leslie M. Dayhoff.)

Q. How many times did you hear these boys say that?

Mr. Esterman: Just a moment.

Mr. Collins: I withdraw that.

Q. (By Mr. Collins): Did these boys say this to you? [113] A. Absolutely.

Mr. Esterman: I object on the ground "these boys" doesn't mean anything.

Trial Examiner Spencer: Let's get it more specific.

Mr. Collins: All right, Strike that answer to the other question.

Q. (By Mr. Collins): Did you hear Mr. Gilpin say that?

Mr. Esterman: I object on the ground that I want to know what he expects this witness to testify that Mr. Gilpin said.

Mr. Collins: Why, my goodness, this is cross examination.

Mr. Esterman: That doesn't mean anything.

Mr. Collins: He isn't my witness. How would I know what your witness is going to testify?

Trial Examiner Spencer: Let's cut out this wrangling. Now, did you hear Gilpin yourself say anything about the War Bond drive?

The Witness: No, I don't recollect anything.

Trial Examiner Spencer: Did you hear Swope say anything about it?

The Witness: Yes.

Trial Examiner Spencer: What did you hear him say?

(Testimony of Leslie M. Dayhoff.)

The Witness: About what I said before, that they said it was very foolish. [114]

Trial Examiner Spencer: Did he say any more than that, Swope?

The Witness: We had had arguments off and on about it.

Trial Examiner Spencer: Did you report that to Johnson or talk about it in Johnson's presence?

The Witness: I probably have, yes.

Trial Examiner Spencer: Did you hear Davis say anything about the purchase of War Bonds?

The Witness: Yes.

Trial Examiner Spencer: What did you hear him say?

The Witness: About the same thing.

Q. (By Mr. Collins): Did he say you wouldn't get your money back?

A. That is what he thought, yes, sir.

Mr. Esterman: Who?

The Witness: Davis.

Q. (By Mr. Collins): Did Mr. Swope say that?

A. Yes.

Q. Did he say it was foolish for any one to buy them? A. Yes.

Q. Did Davis say that? A. Yes, sir. [115]

Redirect Examination

Q. (By Mr. Esterman): Did you tell Mr. Johnson anything about your conversations with Davis about War Bonds?

A. I probably have talked to him about it; not

(Testimony of Leslie M. Dayhoff.)

direct. I don't think to him alone, but with the bunch around there; I have talked to all the men in the shop about it.

Q. By that you mean the subject of War Bonds came up during a discussion of several men; isn't that what you mean? A. Sure.

Q. Johnson may have been present?

A. Yes, sir.

Q. Did you ever discuss with Johnson in private, away from anyone else, the subject of War Bonds, so far as Davis [116] is concerned?

Mr. Collins: I object to that as leading and suggestive.

Trial Examiner Spencer: The objection is overruled.

Mr. Collins: Thoroughly gone over; not proper redirect examination.

Trial Examiner Spencer: I will take it.

The Witness: I don't remember I talked direct to him in private about War Bonds. I have talked about War Bonds so much there, I don't remember just exactly who I talked to about it alone.

Q. (By Mr. Esterman): Did you ever tell Johnson that Davis wouldn't buy War Bonds?

A. I don't know whether Davis has ever said he wouldn't buy any. I don't think I ever recollect of him saying he wouldn't buy any.

Q. Do you know whether Davis has, in fact, bought any War Bonds? A. I don't know.

Q. Do you know whether Gilpin has bought any War Bonds? A. I don't know.

(Testimony of Leslie M. Dayhoff.)

Q. Do you know whether Swope has bought any War Bonds? A. I don't know that. [117]

EDWARD R. HANDZEL,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): Your name is Edward R. Handzel? A. Yes.

Q. Speak up so these gentlemen can hear you, please. Where do you live, Mr. Handzel?

A. 6234 Ben Avenue, North Hollywood.

Q. You are now employed by Kinner Motors?

A. Yes.

Q. You have been there for how long?

A. Oh, approximately 2½ years.

Q. When did you start?

A. I started January 18, 1942, until the present date.

Q. Have you worked continuously for the company since that time? A. Yes.

Q. Have you been on one shift or more than one shift? A. I have been on more than one shift.

Q. Will you tell us briefly what your job history has been, so far as the shifts are concerned?

A. When I started to work in '42 I was working nights [120] then, doing internal grinding on bar-

(Testimony of Edward R. Handzel.)

rels, until June of '43 and the day man had to go to the hospital to be operated on, so I took over the day shift. I did work on days until January, the latter part of January '44.

Q. What happened then?

A. I worked a week in January, and then after that week I went back on days, and I believe it was in April I was asked to go back on nights for a week or two. And after—well, I did work a week nights, that time. They transferred me back to days, and just recently they asked me to work nights again for a week or two.

Q. That is what you are doing now.

A. Yes, sir.

Q. You are at present on the night shift?

A. Yes.

A. What work are you doing, Mr. Handzel?

A. Doing grinding.

Q. Tool grinding?

A. Production grinding.

Q. That is in the machine shop, Plant 1; is that correct? What is correct? I don't know.

A. Well, when I did work nights, the three times they asked me to work nights, it was all work in Plant 2.

Q. What I meant, Mr. Handzel, is where are you working now, what plant? [121]

A. Plant 2.

Q. Plant 2? A. For Plant 1.

Q. What do you mean by that?

(Testimony of Edward R. Handzel.)

A. Well, we are merely using Plant 2's machines to do work for Plant 1. It is Plant 1 work; we are more or less using their machinery there.

Trial Examiner Spencer: It is your testimony that at all times when you worked at nights you were working in Plant 2 for Plant No. 1.

A. That is right.

Q. (By Mr. Esterman): I think you just stated, Mr. Handzel, you spent one week on the night shift in 1944, January, 1944?

A. That is right.

Q. Now, you know and you knew at the time, did you not, that a hearing had been held in the middle of December before the National Labor Relations Board, in a matter involving Kinner Motors?

A. That is right.

Q. You knew that at that time?

A. That is right, yes.

Trial Examiner Spencer: Just to complete the record, may we have the Case number?

Mr. Esterman: 21-C-2307. I might say I do expect to offer some parts of the record before we conclude so the [122] identification will be complete.

Trial Examiner Spencer: Thank you.

Q. (By Mr. Esterman): When was the first time you went to the night shift, do you recall that?

A. It was the latter week of January of 1944.

Q. Is that the first time you went on the night shift?

A. The first time this year.

Q. I meant the first time in your employment?

A. The first time of my employment was January 18, 1942.

(Testimony of Edward R. Handzel.)

Q. Who was your boss then?

A. Mr. Johnson.

Q. Is that Brian C. Johnson?

A. That is right.

Q. When was the next time you went on this night shift? A. January of 1944.

Q. Under whose supervision did you work in January of 1944 on the night shift?

A. Well, I took it for granted it was Mr. Johnson.

Q. Who was in charge of the night shift, do you know? A. I guess it was Mr. Johnson.

Q. Did you report to anyone during that week in January in connection with your work?

A. No.

Q. You understand what I mean by "report"?

A. Well, while working in Plant 2 I guess the privilege [123] has been given to me to just come to my machine and get to work. But as far as anybody coming over to see whether or not I am working, it has never happened.

Q. So, as far as you know, who was in charge of the night shift in Plant 2?

A. At that time Howard was night superintendent.

Q. In Plant 2?

A. In Plant 2. I don't know his first name.

Q. So far as you know, who was in charge of the night shift in Plant 1? A. Brian Johnson.

Q. During that week in January —

(Testimony of Edward R. Handzel.)

Trial Examiner Spencer: Why do you say he was in charge of the night shift?

The Witness: Pardon?

Trial Examiner Spencer: Why do you say that Johnson was in charge of the night shift?

The Witness: Well, the first time I worked nights, if I had any trouble, why, I would always see Mr. Johnson. In fact, the only people that ever did give me orders there was Mr. Davey or Mr. Johnson. There have been times when I had a little difficulty with the day man and talked it over with Mr. Johnson.

Q. Now, during your week on the night shift in January, did you have occasion to go from Plant 2 to Plant 1 at any time? [124] A. Yes.

Q. What was the occasion?

A. Well, during my lunch period—I managed to have my lunch while during working hours, while the machine was running, and did have some time to spare, so I did go to Plant 1 to chat with the boys.

Q. That was during your lunch hour at night. And that would be about what time?

A. Well, let's see. I believe at that time I was going there around 10 o'clock.

Q. 10:00 P. M.? A. Yes.

Q. Now, during your visits to Plant 1, under those circumstances, did you engage in any conversation with Mr. Johnson about the Labor Board hearing held in December? A. Yes.

(Testimony of Edward R. Handzel.)

Q. Do you recall where this conversation took place. A. Yes.

Q. Where did it take place?

A. It took place in Plant 1, around the stairway leading to the Men's Room.

Q. Was anyone else present? A. No.

Q. Tell us the conversation.

Mr. Collins: What date, please? [125]

Q. (By Mr. Esterman): You stated that this conversation with Mr. Johnson was during the week in January of 1944, when you were on the night shift; isn't that right? A. That is right.

Q. And that was what part of January, do you know?

A. The latter part of January.

Q. You don't recall the dates?

A. Well, the exact date I couldn't say, but I think I could say it was the last week of January. The exact date I don't know.

Trial Examiner Spencer: You were on what shift, now, at the time of the conversation?

The Witness: I was on the night shift.

Q. (By Mr. Esterman): It was in January?

A. Yes.

Q. You did work on the night shift for about a week? A. Yes.

Q. It was during that week that you had this conversation with Johnson? A. Yes.

Q. Do you remember the day of the week?

A. No, I don't.

(Testimony of Edward R. Handzel.)

Q. About what time of night was it with respect to your lunch hour? Had you had your lunch?

A. Yes, I had had my lunch before I took my half hour off.

Q. Will you relate now your conversation with Mr. Johnson; [126] what he said and what you said?

A. I was over to see the boys in the tool room, and on the way out I happened to have a newspaper in my hand, the evening paper, and Johnson and I happened to be in the aisle.

He said, "How is it going, Ned?"

I said, "Oh, pretty good." I said, "By the way, Mr. Johnson, how did that hearing come out with the Kinner Union and the Labor Board?"

And he said, "Oh, I really don't know, but those—" Then he cussed—he said a few cussing words there—"those damn fools over in the tool room are just a bunch of trouble makers," and he don't see why in the world they want to cause the company the trouble they did. And if they didn't care to belong to the Kinner Union, well, they didn't have to cause the trouble of bringing it up to the Labor Board, that the company union was company dominated, or rather that the union was company dominated. Well, I didn't say anything.

He also added, "Those guys have been causing trouble here right along. There have been times when I did want to fool around in the tool room there and they kind of made it tough for me. They

(Testimony of Edward R. Handzel.)

had the day foreman to tell me to stay out," that is, out of the tool room.

Shortly after that, it so happens Jim Davis happened to come down the aisle and our conversation stopped there, [127] as far as this conversation about the union was concerned.

Q. When he said, "Those guys in the tool room," whom did you understand him to mean?

Mr. Collins: I object to that as calling for a conclusion of the witness.

Trial Examiner Spencer: Well, did he mention any names?

The Witness: No, he just mentioned the fellows in the tool room.

Q. (By Mr. Esterman): Who was working in the tool room at that time?

A. Gilpin, Davis and Swope.

Q. That is, James Davis?

A. James Davis.

Q. Lewis Gilpin?

A. Lewis Gilpin and Richard Swope.

Q. Are you acquainted with them?

A. Yes.

Q. Did you ever hear anyone refer to them as the Three Muskateers?

A. Oh, I did, but I couldn't say exactly who it was. I kind of didn't make nothing of it.

Q. You have heard them referred to as the Three Muskateers? A. Yes.

Q. By the way, you are here in response to a subpoena; [128] are you not? A. Yes.

(Testimony of Edward R. Handzel.)

Q. At that time, at the time of this conversation with Mr. Johnson, was there anyone else working in the tool room on the night shift, other than these three men you just mentioned? A. No.

Trial Examiner Spencer: Did their conversation take place in Plant No. 1 or Plant No. 2?

The Witness: It took place in Plant No. 1.

Trial Examiner Spencer: Are the men in the tool room in Plant No. 1 or Plant No. 2?

The Witness: In Plant No. 1.

Mr. Collins: Does the Examiner understand this man was working in Plant No. 2 and simply came over on his lunch hour?

Trial Examiner Spencer: I think I have that clearly in mind.

Mr. Collins: Mr. Johnson had no connection himself with the tool room?

The Witness: No, not that I know of.

Mr. Collins: Mr. Johnson had to do with the other branches of Plant No. 1?

The Witness: That is right.

Mr. Collins: That is all. [129]

ROY C. WALKER,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. (By Mr. Esterman): You are Roy C. Walker? A. Yes, sir.

Q. Where do you live, Mr. Walker?

A. 6931 Longridge Avenue, Van Nuys.

Q. Where do you work?

A. Kinner Motors, in Plant No. 1.

Q. What shift? A. Night shift.

Q. How long have you been with Kinner Motors?

A. I commenced to work there the last time in 1938, I believe.

Q. That is to say, you have been there continuously since 1938? A. Yes, sir.

Q. Had you worked there before?

A. With the exception of an operation.

Q. I beg your pardon?

A. With the exception of time off for an operation.

Q. When were you off for that?

A. I was off in '39.

Q. For about how long? [131]

A. Approximately two months.

Q. Had you worked for the company before 1938. A. Yes, sir.

Q. When?

A. I commenced to work for them the first time on the 4th day of April, 1934.

Q. And left when?

(Testimony of Roy C. Walker.)

A. In '35 sometime, there was a slack period.

Q. What is your work at present?

A. Well, I just do whatever they tell me.

Q. What kind of work do you do?

A. Machine shop work.

Q. Are you a machinist?

A. Well, I don't know whether I am or not.

Q. Do you work on machines? A. Yes, sir.

Q. What kind of machines?

A. I work on milling machines, drill presses of all types, shaper, lathe.

Q. Have you been working on those machines since you came with the company in 1938?

A. Yes, sir.

Q. Now, you were acquainted, were you not, with Lewis Gilpin, James Davis and Dick Swope?

A. Yes, sir. [132]

Q. When they worked for the company?

A. Yes, sir.

Q. You know that Swope was let out on February, on or about February 17th, and that Davis and Gilpin were discharged on or about the 24th. I should say that Swope was discharged on or about the 19th, and the other two on or about the 24th. You knew that; did you not?

A. I knew positively of Davis and Gilpin going. Swope just didn't happen to be there one night, is all I happen to know about that.

Q. I see. Now calling your attention to the night that Gilpin and Davis were discharged, the night of February 24th, I think it was—we have an exhibit

(Testimony of Roy C. Walker.)

here which shows exactly—according to Board's Exhibit 3 he was discharged on February 23rd. Calling your attention to the night they were discharged, did you go to work that night? A. Yes, sir.

Q. Did you see Davis and Gilpin at or about the time you came to work? A. Yes, sir.

Q. At or about that time did you have any conversation with Mr. Brian Johnson?

A. Yes, sir, I did.

Q. Where did you have this conversation?

A. Near the corner of the tool crib. [133]

Q. Was anyone else there? A. No, sir.

Q. Was anything said by you or Johnson on the subject of Davis and Gilpin leaving the company?

A. I said to Johnson, "What is going on here? Is Davis and Gilpin getting fired?"

And he said, "It looks like it."

Q. What were Davis and Gilpin doing at that time?

A. They were picking up their tools and putting them in the boxes and closing up the boxes and checking in their checks.

Q. They weren't with you and Johnson?

A. No, sir.

Q. Did Davis and Gilpin leave the plant then, so far as you know? A. Yes, sir.

Q. Did you later that evening discuss the subject of Gilpin and Davis with Johnson?

A. Yes.

Q. When was that, in relation to the time they

(Testimony of Roy C. Walker.)

left? Was it immediately after or later in the night or when?

A. I would say it would be anyway from 20 minutes to an hour after they had gone.

Q. Was anyone else present during that conversation?

A. Why, there was one of the fellows standing near, but [134] he didn't say anything at the time.

Q. Do you know who the fellow was?

A. Linkogle.

Q. Is he one of the men that works there?

A. Yes, sir.

Q. Did he take part in that conversation?

A. No, sir, he didn't.

Q. What was the conversation between you and Johnson at that time?

A. Well, I said to Mr. Johnson, I said, "I don't see why they couldn't have sent them over to the other shop, like they did the others."

He said, "Yes, they could have done that."

Q. I can't hear you. Talk up.

A. I said to Johnson, I said, "I don't see why they couldn't send them over to the other shop like they did the others."

He said, "Yes, they could have done that." He said, "The way they are getting them out of here is kind of weak." He said further that if Davey had come and said anything to him, he could have told him how to let them go, to not get back, and that he believed the company was paying them right then and didn't know it.

(Testimony of Roy C. Walker.)

Q. Have you told us now all you can recall of that conversation? A. Yes. [135]

Q. During the past year has the company sent men from Plant 1 to Plant 2? A. Yes, sir.

Q. You know that to be a fact?

A. Yes, sir.

Q. Now, you said that you have told us all you recall of that conversation. I will ask you whether you said that Mr. Johnson told you that he thought their being let out was kind of weak?

A. Yes, sir.

Q. Is that the language he used?

A. That is the very words he used.

Q. Did he tell you what he meant by that?

A. No, he didn't.

Q. Did you ask him what he meant?

A. No, sir.

Q. That is all you recall of that conversation at this time?

A. Well, he further stated that they could have let them go from the other shop.

Q. I can't hear you.

A. He further stated at that time they could have let them go from the other shop.

Q. Let them go from the other shop?

A. Yes, after they had been transferred there they [136] could have been let go from there.

Q. Mr. Johnson said that?

A. Mr. Johnson said that.

Q. Have you told us all you recall of that conversation? A. That is all I can recall.

(Testimony of Roy C. Walker.)

Q. Very well. You know, do you not, that there was a proceeding before the War Manpower Commission early in March, 1944, in connection with the discharge of these three men.

A. I knew there was something, I didn't know where, only it was to take place in Glendale, so far as I knew.

Q. You heard Mr. Collins mention that a few minutes ago; did you not? A. Yes, sir.

Q. Calling your attention to the first week of March, the early part of March, I will ask you if you had any conversation at that time, at or about that time, with Johnson on the same subject, that is, the subject of the discharge of Gilpin, Davis and Swope?

A. Well, I had some conversation with him one evening.

Q. Was it about that time?

A. Yes, it was just a little while before this hearing took place.

Q. You mean the Glendale hearing?

A. The Glendale hearing.

Q. Where did you have this conversation with Johnson? [137]

A. Back down by this tool box.

Q. Is that in Plant 1?

A. In Plant 1.

Q. What were the circumstances? Was anyone else there? How did it start?

A. Previous to the conversation with him, Mr.

(Testimony of Roy C. Walker.)

Sullivan had come in and he and Mr. Johnson stood by the corner of the tool room—I mean the tool crib, near the corner of the tool crib, and talked for quite awhile. So after Mr. Sullivan left, Johnson went down toward his tool box and I met him on the way. And I asked him what Sullivan wanted.

He said, “He wants me to make out a statement against those fellows.” He said, “That is what I am going to write out now.” He said, “That is the way they do things here. They wait and never tell you anything, just wait until they get in a jam and come to you and get you to help them out.”

Q. Did you say anything?

A. No, I don’t recall that I said anything to him.

Q. The statement you just recited was made by Mr. Johnson? A. Made by Mr. Johnson.

Q. Was anyone else present when he made it?

A. No.

Q. Mr. Sullivan had left when he made it?

A. Mr. Sullivan had been gone for all of 10 minutes or more. [138]

Q. Is that all you recall of that conversation?

A. Yes, that is all there was to that conversation.

Q. Now, so far as you know, what is Mr. Johnson’s job with the company?

A. What is his job?

Q. Yes.

A. Well, so far as I know, he acts as a foreman.

Q. Do you know who he reports to?

A. He reports to Mr. Swanson.

Q. Who is Mr. Swanson?

(Testimony of Roy C. Walker.)

A. Mr. Swanson is the day foreman, so far as I know.

Q. Whom do you report to? A. When?

Q. Well, in connection with your work. Who is your superior?

A. Well, in the case that I come in of an evening, Mr. Swanson.

Q. You mean the day foreman?

A. He is always there, as a usual rule. If he is not there, one of his assistants is there as a usual thing. Of course, if they all happen to be gone, Johnson will designate the machine to work on. If Johnson is not there, should happen to come in late, which has occurred, some other employee will tell me where to go to work.

Q. Mr. Swanson doesn't stay there all night; does he? [139]

A. Oh, no, he stays there until we come on, as a usual rule.

Q. Then he leaves?

A. Yes, he leaves shortly afterwards. Of course, there is some nights he doesn't stay.

Trial Examiner Spencer: Do you know whether Johnson does any production work himself?

The Witness: Some times.

Trial Examiner Spencer: Do you work in a position where you observe Johnson throughout your shift?

The Witness: Well, if you mean am I in sight of him or where I can see what he is doing, I would

(Testimony of Roy C. Walker.)

say part of the time I can see what he is doing from where I am working.

Trial Examiner Spencer: What is your observation as to how much of his time he puts in in production work himself?

The Witness: Well, that would be just whatever Mr. Swanson would designate for him to do. If he didn't designate for him to do something, any particular night, why, he wouldn't do anything in the production line.

Mr. Esterman: I have no further questions.

Trial Examiner Spencer: Do you have any cross-examination, Mr. Collins? [140]

Redirect Examination

Q. (By Mr. Esterman): Since you have been with Kinner, have you ever heard of the job classification of junior toolmaker? A. No, sir.

Q. Has there been a man named Schultz on the night shift? A. Yes, at one time. [146]

Q. What is his name? A. Henry.

Q. Henry Schultz? A. Henry Schultz.

Q. Is he still on the night shift?

A. I believe at this present time he is working days in Plant No. 2.

Q. Was he at one time on the night shift?

A. He was at one time on the night shift, in Plant No. 1.

Q. When did he leave the night shift, if you know? A. I can't recall —

Q. I am not asking you for the date, Mr. Walker. I mean approximately.

(Testimony of Roy C. Walker.)

A. He left sometime last year, I believe.

Q. Where did he go from the night shift in Plant 1?

A. He went to the night shift in Plant No. 2.

Q. Did you see him there? A. Yes, sir.

Q. What work did he do in Plant 1?

A. He was a gish hole operator on cylinder barrels.

Q. Do you know what job he went to in Plant No. 2?

A. Only what I saw him doing. I saw him operating a grinder.

Q. In Plant 2? A. In Plant 2. [147]

Q. Was there an employee named Woodsford on the night shift while you have been with the company? A. Yes; there were two of them.

Q. Are they brothers? A. Yes.

Q. Do you know their first names?

A. Alfred and Harry. I believe it is Henry, instead of Harry.

Q. Are they still on the night shift?

A. Alfred is on the night shift in Plant No. 2. Harry, I believe, is on the day shift in Plant No. 2 at present.

Q. Did they both leave the night shift in Plant 1 at the same time. A. I believe they did.

Q. About when was that, if you recall?

A. I believe that was in 1942. I am not positive about that date.

Q. Where did Harry go?

A. Harry went to Plant No. 2.

(Testimony of Roy C. Walker.)

Q. On the night shift? A. Yes.

Q. Did you see him there? A. Yes.

Q. Working on the night shift?

A. Yes sir. [148]

Q. What about Alfred, did he go to the night shift? A. He went to the night shift, too.

Q. In Plant 2? A. Yes, sir.

Q. What work did these gentlemen do on the night shift in Plant 1 where your work is?

A. Harry worked on—at the time he left Harry worked on rear covers and crank cases, and front covers and smaller stuff. Alfred worked on rear covers, front covers, crank cases and crank shafts.

Q. With respect to these same two boys, do you know what work they did when they went over to Plant 2 on the night shift? Take them one at a time.

A. I don't know just exactly what Harry done when he first went over there. It wasn't long after he had been there until he was broken in on the thread grinder, and ground threads of the cylinder barrels.

Q. Did you see him doing that work?

A. Yes, sir.

Q. What about the brother?

A. The brother did a little tool work, that I know of. Then he was placed, as a lead man, over all the drill presses on the night shift.

Q. In Plant 2?

A. In Plant 2. That is what he is doing today.

[149]

(Testimony of Roy C. Walker.)

Trial Examiner Spencer: Is it Henry or Harry?

The Witness: I believe his name is correctly Henry, but everyone calls him Harry; his initials are H. J. Woodsford, I believe. [150]

LEO MUNKACHY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): Will you state your name, and spell your last name, please?

A. Leo Munkachy; M-u-n-k-a-c-h-y.

Q. Where do you live, Mr. Munkachy?

A. 420 West Oak Street, Glendale.

Q. Please talk up so these gentlemen over here can hear you (indicating).

A. 420 West Oak Street, Glendale, California.

Q. Where are you employed?

Q. Kinner Motors.

Q. How long have you been employed by Kinner Motors?

A. Since the 29th of February; about three months.

Q. 1944? A. 1944.

Q. Before that, just prior to that, what did you do?

A. Well, the employment I had before that was

(Testimony of Leo Munkachy.)

in Cleveland, Ohio; Cleveland Graphite-Bronze Company. [151]

Q. How long were you with the Cleveland Company? A. A year and a half.

Q. According to Board's Exhibit 4, which is in this record, Mr. Munkachy, you were employed by the company on February 28, 1944. Is that substantially your recollection? Did you say the 28th or 29th?

A. No, the 29th. I reported on the 28th and started on the 29th.

Q. I see. Have you told us what work you did in Cleveland?

A. I was doing tool and die work at Cleveland Graphite.

Q. How much time did you spend there?

A. At Cleveland Graphite about a year and a half, approximately.

Q. Have you had any similar experience with tool work or grinding?

A. Yes, I was working at the Marrion Welding Company in Cleveland, in machine shop work.

Q. How much time did you spend there?

A. About four months, I imagine.

Q. Did you apply for work at Kinner's in February? A. Yes, I did.

Q. How did you come to apply there?

A. Well, I wanted to get back into the tool and die work, and I applied at Kinner Motors for that type of work.

(Testimony of Leo Munkachy.)

Q. I mean how did you happen to apply at Kinner's, [152] particularly?

A. At that time it was convenient for where I lived, not having a car for transportation.

Q. It was near your residence?

A. That is right.

Q. Now, when did you first go there?

A. About the 23rd of February, was the first—yes, that was the first time I went to that place.

Q. What happened on that day with respect to your trying to get a job at Kinner?

A. They told me what was open.

Q. Who told you what was open?

A. Mr. Sullivan.

Q. Did you see Mr. Sullivan personally?

A. He was interviewing me at that time. At that time there wasn't anything open in that line of work was the information I was given.

Q. What work did you ask for?

A. Wait a minute. I will take that back, on that statement there. At that time he told me what I could start for at a job at Kinner Motors.

Q. What did he tell you?

A. I could start in the tool room at Kinner Motors at \$1.05 an hour. That is, on nights, \$1.00, plus five, and I wanted to look around for other employment at that time, [153] being the first place I had gone to. I came back the following day and he told me that day that he didn't have openings, but, as I left the plant, I got in the car and left and when I arrived home that evening I found a letter

(Testimony of Leo Munkachy.)

stating it was all a mistake, that I should report in to work Monday night.

Q. After you got this letter marked Board's Exhibit 7, what did you do?

A. I waited until Monday and reported in ready for work, brought my tool box in. And at that time he told me the work I had to do and he apologized for——

Q. Just a moment. Now, when you said "he told me," please tell us who you mean?

A. Mr. Sullivan told me I would be hired as a toolmaker at Plant 1. And he also apologized for having made the mistake [154] in telling me there wasn't a job open on the previous date that I was there, that I received the letter. And that he even made the statement they practically run up the street trying to get me, but missed me.

Q. I would like to have you tell us, if you can, what date this happened. This is the date Mr. Sullivan told you he had given you the wrong information?

A. That was on Monday; that was the 28th.

Q. 28th of February? A. That is right.

Q. That was some days after you received the letter?

A. That was the date the letter told me to report in ready for work, the 28th of February, on Monday.

Q. What happened then after your talk with Mr. Sullivan?

A. I brought my tool box in and talked to him.

(Testimony of Leo Munkachy.)

I had some private business to take care of. I asked him if it would be all right to come in the following night, which was the 29th; and I started work.

Q. You did start on the following night?

A. 29th.

Q. Where did you start to work?

A. Well, when I arrived that night he told me that the position of toolroom work was not open at present in Plant 1, and asked me if I would take a temporary job in Plant 2.

Q. Mr. Sullivan told you that? [155]

A. That is right.

Q. Then what did you do or say?

A. Well, I accepted the job with the understanding that I would be transferred to Plant 1.

Q. Was there something said about that understanding at the time?

A. That was the job I was—my understanding I was hired for was Plant 1.

Q. Then you went to Plant 2 at Mr. Sullivan's direction?

A. That is right.

Q. On Tuesday night?

A. Tuesday night.

Q. Did you report to someone?

A. Well, I reported in to Joe Sickie, the foreman at Plant 2 on nights.

Mr. Esterman: I beg your pardon, Mr. Collins. I meant to show you this letter. I am sorry.

Q. (By Mr. Esterman) Go ahead, Mr. Witness.

A. Well, I reported in to him. The type of work they were doing in the toolroom was not at that time—it was a disappointment from what I had ex-

(Testimony of Leo Munkachy.)

pected, because they have mill hands and bench hands, and that was my line, mill shaper and bench. And I was more or less what you might say out to learn all I could, being only approximately two years of experience in the trade. And so I saw Mr. Sickie that [156] night and asked him for a release, because it was completely unsatisfactory to my estimation at that time. I went from there—he took me in to Howard.

Q. Is that Howard Sharrar?

A. That is right.

Q. Who is he?

A. He was the superintendent on nights at that time. And Howard, after taking me into the office Joe left me. I was left there alone with Howard, and he told me that within two weeks I was to have a transfer to Plant 1. And he even went so far as to take me over to Plant 1 and show me the tool room and told me who I worked under; the man he worked under, learned his trade from. He explained to me what I would do, all-around machine work on everything and would have a wonderful opportunity to learn.

Q. Who was this man he said——

A. I don't remember his name. All I remember was Nick.

Q. Mr. Ross Nickols?

A. Yes; an elderly man.

Q. Was it Ross Nichols; do you know?

A. Yes.

(Testimony of Leo Munkachy.)

Q. Did Mr. Sharrar take you over to the tool-room in Plant 1?

A. He took me over and showed me the tool room that night.

Q. From Plant 2? [157]

A. From Plant 2.

Q. Then what happened?

A. That was perfectly satisfactory to me. So I continued my employment in Plant 2, which I figured would be approximately two weeks from the statement he made.

Q. What statement did he make?

A. That I would be transferred to Plant 1 within two weeks.

Q. Did he say where in Plant 1 you would be transferred?

A. To the toolroom of Plant 1.

Q. Mr. Sharrar said that to you?

A. That is right. Well, from there two weeks went by, and at that time he told me to keep it under my hat. I have no idea what for, but that was the statement he made.

Q. Keep what under your hat?

A. The transfer until it comes. In general, the way I understood it, I wasn't to talk to any of the boys or anything; go back to the toolroom and continue working.

Q. Do you mean by that statement that he told you that your contemplated transfer to the toolroom in Plant 1 was something you shouldn't discuss with anyone; is that what you mean?

(Testimony of Leo Munkachy.)

A. That is what I gathered by it.

Q. What did he say?

A. Well, he said——

Q. Did he use those words, “to keep it under your hat”?

A. “‘To keep it under your hat’” to quote him. [158]

Q. What work are you doing now?

A. Well, right now I am doing mostly grinding work.

Q. In what Plant? A. In Plant 2.

Q. After this conversation you just related with Howard Sharrar, did you ever take the subject up with him again with reference to your transfer?

A. Yes. I asked quite a number of times.

(The documents referred to were marked as Board's Exhibits Nos. 6 and 7 for identification and received in evidence.) [159]

BOARD'S EXHIBIT No. 6

Plant 1
Foremen

Plant 2
Foremen

Kenneth Freese

Paul Hawkins

Harry Swanson

Walter Ferguson

Howard Williams

Dale Evans

Fred Strehlein

Ross Nichols

Ferdinand LaCom

Bud Sorenson

Brian Johnson

(Testimony of Leo Munkachy.)

Leadmen

Leadmen

Jack Williams

Jack Gilbert

Albert Gardiner

James Brown

Warren Durbin

Ray Wildman

Homer Watters

William Suttie

George Orril

Howard Sharrar

Joseph Sickells

Frank Gifford

Thomas Mills

Joseph Wilson

Chief Engineer—Jack Kuhn

Test Superintendent—Fritz Gerber

Foremen—Earl Friar, Charles Noble, W. J. Kroening, Charles Pritchard.

BOARD'S EXHIBIT No. 7

Kinner Motors Inc.

(Cut)

635 West Colorado Boulevard

Glendale, California, U.S.A.

Please address all correspondence to Kinner Motors Inc., and reply in duplicate.

Telephones: Los Angeles, Chapman 5-1021; Glendale, Citrus 3-3141. Cable Address, Kinco, Bell System, Teletype Writer Service, Glendale 7078.

(Testimony of Leo Munkachy.)

February 23, 1944

Mr. Leo Munkachy
225 North Brand Boulevard
Glendale, California

Dear Mr. Munkachy:

We regret that in error you were told that we could not use you. We can start you in the tool room Monday night at \$1.05 per hour.

Please report at 4 p. m. Monday at the personnel office ready to start to work.

Very truly yours

KINNER MOTORS, INC.

E. J. SULLIVAN

E. J. Sullivan

Personnel Director

ELS:ic

Enc: Application

LEWIS GILPIN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): Your name is Lewis Gilpin?
A. Yes, sir.

Q. Where do you live, Mr. Gilpin?

A. 731½ Porter Street, Glendale.

Q. Where are you now employed?

A. Bendix, 11600 Sherman Way.

(Testimony of Lewis Gilpin.)

Q. Bendix what? A. Pacific Division.

Q. Of Bendix Aviation? A. Yes.

Q. What work are you doing there?

A. Tool room work.

Q. Does that mean making tools?

A. Yes, sir.

Q. What kind of tools do you make?

A. Make jigs, fixtures, tools for all operations; all kinds of tools, jigs and fixtures for tool work in [174] production.

Q. Do you work on any machines?

A. Yes, sir.

Q. First, tell me when you went to work for Bendix?

A. When I went to work for Bendix?

Q. Yes, when you started.

A. I started around the first part of March, 1944.

Q. You don't know the exact date?

A. No, I don't.

Q. Do you have any memorandums on you that would help you refresh your recollection?

A. I have my card.

Q. Will you look at it and tell us?

A. I don't know whether it gives the date. It don't give—3-6, and '44.

Q. That is the date you started? A. Yes.

Q. March 6, 1944? A. Yes.

Q. Thank you. You were discharged by Kinner Motors on February 24th; is that correct?

A. February 23rd.

(Testimony of Lewis Gilpin.)

Q. February 23rd? A. Yes.

Q. Did you work anywhere between the 23rd of February and [175] March 6th? A. No.

Q. Now, I started to ask you about Bendix and about the kinds of machines that you work on. Will you tell us?

A. I work on engine lathes, grinder, jig bore, drill presses, milling machines, and anything they got. They don't have them all. I work on them all.

Q. At least the ones you have named are ones you have worked on since you have been with Bendix? A. Yes; since I have been there.

Q. Were you about to mention something else?

A. I was going to tell you that I worked on all of them; planers, slotters, post mill.

Q. I am asking you now about machines you are working on at Bendix.

A. No, that isn't in Bendix.

Q. The last three you mentioned are machines you worked on somewhere else? A. Yes.

Q. Limit your answer to Bendix.

A. That is about all they have.

Q. What is your classification at Bendix?

A. Tool maker.

Q. What is your hourly wage?

A. \$1.35, with a 5-cent bonus. [176]

Q. Including 5-cent bonus?

A. That is \$1.35, plus 5-cent bonus.

Trial Examiner Spencer: That is 5 cents an hour bonus; is it?

The Witness: For night work.

(Testimony of Lewis Gilpin.)

Q. (By Mr. Esterman): You are a machinist; are you not? A. I am.

Q. This is a preliminary question: Generally, how long have you been working as a machinist? How long have you done machine work?

A. About 20 years.

Q. Can you tell us now when you first started?

A. Yes. In 1926.

Q. Prior to that date you had not worked on machines? A. No, sir.

Q. Where did you work in 1926 when you started?

A. Bessmer Diesel Engine Works, Grove City, Pennsylvania.

Mr. Esterman: May we go off the record a moment?

Trial Examiner Spencer: Yes.

(Discussion off the record.)

Trial Examiner Spencer: On the record.

Mr. Esterman: Mr. Examiner, might I, at this time, interrupt the examination of Mr. Gilpin temporarily and call another witness?

Trial Examiner Spencer: Yes. [177]

WORTH WRIGHT,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): Will you state your name and address, sir?

A. My name is Worth Wright, Pasadena Star News and Post, Pasadena 1, California.

Mr. Collins: Apparently they have some ads. If you will take a recess, perhaps we will save a lot of time on this.

Mr. Esterman: I want some testimony from this witness.

Mr. Collins: I mean if it is a question of the form of the ads on this thing.

Mr. Esterman: Counsel is looking at documents which the witness just handed me and which purport to show that certain ads did appear. I take it from his statement he means that where there are such ads or where the copy itself is indicated counsel may stipulate to the contents without asking me to elicit all that information from this witness. Is that [202] right?

Mr. Collins: Yes.

Mr. Esterman: Very well. I want to ask one or two questions of this witness.

Mr. Collins: I didn't get this witness' name.

Trial Examiner Spencer: Worth Wright.

When I reject an exhibit, if you want it in a re-

(Testimony of Worth Wright.)

jected exhibit file, please make a request to have it placed in the rejected exhibit file.

Mr. Esterman: I am sorry. I meant to make that request, Mr. Examiner, and I now make that request with respect to Board's Exhibit 9 with sub-letters.

Q. (By Mr. Esterman): What is your work?

A. Classified advertising manager of the Star News and Post.

Q. That is in Pasadena? A. Pasadena.

Q. During the course of your work have you had any business dealings with Kinner Motors, Inc., of Glendale in respect to placing of advertisements in your paper?

A. I do not handle the copy myself; it is handled by our employment girl, whose name is Miss Johns.

Q. When I say "you" I mean your paper.

A. Yes, that is right.

Q. You have had dealings with the company?

A. We do. [203]

Mr. Collins: I will stipulate to that. I am not making any basis of that——

Mr. Esterman: Then I am going to ask for a stipulation which may take a few minutes to read into the record, which I think will save a great deal of time

Trial Examiner Spencer: Very well.

Mr. Esterman: I will ask the company if they will stipulate——

Mr. Collins: First, let me look at these things.

(Testimony of Worth Wright.)

Mr. Esterman: Of course. May we go off the record?

Trial Examiner Spencer: If you want to take a brief recess to look over those papers, we will do that.

Mr. Esterman: Yes, sir.

(Short recess taken.)

Trial Examiner Spencer: The hearing will be in order.

Q. (By Mr. Esterman): With respect to the advertising copy which you brought in, Mr. Wright, it is a fact, is it not, in each instance where copy was ordered or placed with you it appeared simultaneously in both the Pasadena Star and the Pasadena Post; is that correct? A. That is correct.

Q. By that I mean that whatever ad would appear in one would appear in the other in the nature of a duplicate; is that correct?

A. That is correct. [204]

Q. How frequently do the papers appear?

A. Published daily and Sunday.

Q. Seven days a week?

A. Seven days a week.

Mr. Esterman: I will ask the company if they will stipulate with respect to the papers just mentioned by the witness that in 1943, from November 2nd, daily, through November 8th advertisements appeared bearing the name of the company, asking for machine shop, swing shift help, grinders, tool makers, milling machine, bullard radial drill, 60 hours a week, night bonus.

(Testimony of Worth Wright.)

I would like to have the record show, with respect to this stipulation, all the advertisements I am mentioning in my stipulation include the statement they all appear under or above the name of Kinner Motors, Inc.;

That from November 9th through November 15th, in the same papers, there appeared an advertisement asking for "grinders, bullard operators, machinists, radial drill, burr and file operators";

That for the period November 16th through November 22nd there appeared similar advertisements asking for "grinders, bullard operators, machinists, radial drill, janitors, 60 hours a week, night bonus";

For the period from November 23rd through November 29th, 1943, appeared an advertisement calling for "grinders, [205] bullard operators, machinists, radial drill and janitors."

The matters I am going to mention from here on are in the year 1944. That during the period beginning March 16th and running through March 22nd, inclusive, 1944, an advertisement appeared calling for "machine operators, engine assembly men, male and female, 60 hours a week, day and swing shifts";

That for the period March 24th through March 30th, inclusive, an advertisement appeared asking for "assistant chief cost accountant, must have production manufacturing experience";

That for the period from March 24th through March 30th, 1944, appeared an advertisement asking for "machine operators, engine assembly men,

(Testimony of Worth Wright.)

male and female, 60 hours a week, day and swing shifts”;

That for the period of March 31st through April 6th appeared an advertisement asking for “assistant chief cost accountant”;

For the period from March 31st through April 6th appeared an advertisement asking for “machine operators, swing shift, some unskilled openings”;

That for the period from April 7th through April 13th appeared an advertisement asking for “assistant chief cost accountant.” I am including that simply to preserve the continuity, not because I make any point of the cost accountant.

For the record April 7th through April 13th, 1944, [206] appeared an advertisement asking for “tool designers, day shift, also inspectors, day and swing shift, machine operators, swing shift, some unskilled openings”;

For the period April 14th through April 20th, inclusive, there appeared an advertisement asking for “tool designers, day shift, inspectors day and swing shift, machine operators swing shift, some unskilled openings.”

Trial Examiner Spencer: You have heard the reporter read the stipulation as posed by counsel for the Board. Is the stipulation thus proposed agreeable to the respondent, Mr. Collins?

Mr. Collins: Yes, I so accept it.

Trial Examiner Spencer: It is stipulated.

Mr. Esterman: I offered the stipulation and I join in it.

(Testimony of Worth Wright.)

Thank you, Mr. Wright.

(Witness excused.)

HELEN CHARLTON,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): May we have your name and address?

A. Helen Charlton, Los Angeles Examiner.

Q. In what capacity are you employed by the paper? [207]

A. I am the chief clerk of the classified accounting department.

Q. How long have you been employed in that capacity, approximately?

A. About a year in that capacity.

Q. In general, what are your duties?

A. I have charge of the classified accounting bookkeeping.

Q. In that capacity you are familiar with the various accounts of companies and persons that place advertisements in the paper; is that correct?

A. Yes, I am.

Q. During the course of that employment you have had occasion, have you not, to handle accounts with Kinner Motors, Inc., of Glendale?

A. Yes.

(Testimony of Helen Charlton.)

Mr. Esterman: May we go off the record one moment?

Trial Examiner Spencer: Yes.

(Discussion off the record.)

Trial Examiner Spencer: On the record.

Mr. Esterman: I am going to ask for a stipulation at this time. In each instance where I mention advertisement it is with the intention of stating that the particular advertisement which I will abbreviate and which I will confine simply to classifications and shifts in each instance—I mean to indicate it is an advertisement carrying the name [208] Kinner Motors and it appeared in the Los Angeles Examiner, a daily paper, which circulates here in Southern California, in the help wanted section under the classification male. I make that preliminary statement to save repetition.

I will ask the company if they will stipulate on November 1st an ad appeared asking for “grinders, tool makers, machinists, bullard radial drill operators for swing shift, 60 hours a week, night bonus”;

On November 3, 1943, an ad appeared which says, “burring and filing machine, operating swing shift, with or without machine shop experience”;

That on November 20, 1943, an ad appeared asking for “machinists, night shift, 60 hours a week, good wages”;

That on November 29, 1943, an ad appeared asking for “radial drill operators, day and night shifts, top wages”;

(Testimony of Helen Charlton.)

That on December 31, 1943, an ad appeared asking for "tool and cutter grinders";

That on February 18, 1944, an ad appeared calling for "machinists and research engineers, 100 per cent war industry";

That on March 3, 1944, appeared an ad asking for "mechanical and research engineers, 100 per cent war industry";

That on March 22, 1944, appeared an ad calling for "a tool designer, top pay, 100 per cent war work." That is all. [209]

Trial Examiner Spencer: Do you stipulate, Mr. Collins, to that?

Mr. Collins: I will so stipulate.

Mr. Esterman: I have offered the stipulation, and I join in it.

LEWIS GILPIN

called as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

Trial Examiner Spencer: Mr. Gilpin, you have already been sworn, you were on the stand and you were testifying under oath?

The Witness: Yes. [216]

Mr. Esterman: My recollection is, Mr. Examiner, that the witness was starting to tell us about

(Testimony of Lewis Gilpin.)

his employment in 1926 at Bessmer Diesel Engine when I interrupted him.

Q. (By Mr. Esterman): Will you tell us at this time, Mr. Gilpin, first, for what period you worked at Bessmer Diesel Engine?

A. That was my apprenticeship, four years.

Q. You began in 1926? A. Yes.

Q. And ended when? A. In 1929.

Q. Where is that company or was it at that time? A. In Grove City, Pennsylvania.

Q. Now, with respect to the last year at Bessmer, and when I say last year I mean the latter part of your tenure at Bessmer, does your recollection serve you as to what kind of work you were doing at that time, when you left, in other words?

A. When I left there?

Q. Yes.

A. I was operating a milling machine.

Q. Did you operate any other machines?

A. Well, I have.

Q. While you were with Bessmer?

A. All of them, yes. [217]

Q. Will you name some of the machines you operated?

A. Shaper, planner, drill press.

Trial Examiner Spencer: On each one of these classifications, the reporter and myself are not familiar with them. Spell them out, if there are any unusual ones.

The Witness: Lathe, slotter, J. & L., that is turret lathe; Jones and Lampson.

Trial Examiner Spencer: J. & L.

(Testimony of Lewis Gilpin.)

Q. (By Mr. Esterman): Have you mentioned all the machines you recall at this time?

A. Grinders, surface, internal and external, boring mill. There are two of them—there is King and bullard. That is about all.

Q. You have now named all you can remember of the machines you operated when you were employed by Bessmer Diesel Engines?

A. That is right.

Q. What was your next employment after you left that company?

A. Goodyear Tire & Rubber Company, Akron, Ohio.

Q. You started there and left there when?

A. I started there in 1929, and left there in November, 1942.

Q. 1929 to 1942, you were there approximately 13 years; is that correct?

A. Close to 14. That is what I got my service record on. [218]

Q. Did you work in more than one department or phase of the plant?

A. Well, I worked just in the general machine shop first.

Q. For how long?

A. Oh, I was there about two years.

Q. Then after that? A. In the tool room.

Q. In the tool room? A. Yes.

Q. Was the last, approximately last 12 years then at Goodyear spent in the tool room?

A. Yes.

(Testimony of Lewis Gilpin.)

Q. Were you employed as a machinist or what were you employed as?

A. Well, I was employed as tool maker then. Machinist is a tool maker.

Q. Keep your voice up.

Trial Examiner Spencer: Do you associate the term machinist and tool maker?

The Witness: They do in the east, yes. They associate it. The machinist can operate in the tool room, as well as anybody else, if he is an A-1 machinist.

Q. (By Mr. Esterman): If he is a what?

A. If he is an A-1 machinist.

Q. If he is a skilled man? [219] A. Yes.

Q. Can you state in general what the nature of your work was in the tool room? I know it has been a great many years and covers quite a period of time. I want you to make a general statement of the work you did, what you did.

A. That was forming tools and templets.

Q. Have you in mind the machines which you mentioned a few moments ago, on which you worked at Bessmer, can you state whether or not you worked in general on the same types of machines when you were at Goodyear?

A. Well, as a rule, all but boring mills because they didn't have them there, up in the tool room.

Q. You mean in general you worked on the same kind of machines, except the boring mills because they didn't have any boring mills in Goodyear? A. No.

(Testimony of Lewis Gilpin.)

Q. Was there any machine you worked on at Goodyear they didn't have at Bessmer?

A. They had them all there, but I didn't work on all of them. They had them at Goodyear, the same as Bessmer.

Q. What machines did you work on at Goodyear?

A. On everyone except the boring mills; I never operated any boring mills there.

Q. You worked on every machine they had there?

A. Grinder, shaper, slotter, milling machine, planer, [220] internal, external grinder and also profile and profile sawing on tools.

Q. You worked on the machines they had there?

A. Yes.

Q. What did you do after November, 1942?

A. I came to California.

Q. I mean with reference to your employment? Did you go to Kinner Motors?

A. I did in 1942, in December, around about the 7th or 8th.

Q. You were hired as what?

A. I was hired in there, in the machine shop at Kinner.

Q. Now, do you know what your classification was at that time?

A. No, just general machinist, was all I know.

Q. At what rate, if you remember?

A. \$1.25.

Q. On what shift?

(Testimony of Lewis Gilpin.)

A. The night shift, the swing shift, I guess that is what they call it.

Q. Now, since December, 1942, until you were discharged in February of 1944, did you remain on the night shift all that time? A. Yes, sir.

Q. Did you remain in the machine shop all that time? [221]

A. No, I was only out there about a month, and I was transferred into the tool room.

Q. So that you went into the tool room in Plant 1 around January 1, 1943?

A. Around that time.

Q. Now, being in the tool room, does that mean that is where you did all your work?

A. That is where I did most of my work at Kinner's.

Q. I can't hear you.

A. Since I have been at Kinner's that is where I have done most of my work.

Q. I am trying to find out and I want you to tell us whether working in the tool room meant you spent most or all of your time in a particular place called the tool room; is that so?

A. Yes.

Q. If you left the tool room it was for what purpose, aside from going out to lunch or something like that?

A. It would be to go out and set up a job on a machine, on some tool we made, or a repair job on some fixture or jig.

(Testimony of Lewis Gilpin.)

Q. When you speak of setting up a machine, what do you mean?

A. I mean setting the jig for the machine.

Q. So the machine is set for the operator for him to work [222] on that particular machine?

A. That is right.

Q. It is a fact, is it not, so far as you were concerned in the tool room the work that you were engaged in during that period was not related to production in the sense you produced anything?

A. No.

Q. What you did was work on the tools used in production; isn't that right? A. Yes.

Q. During that period what machines at Kinner did you work on?

A. Well, there I operated a grinder, drill press, jig bore, lathe, shaper and once in a while I would go over and operate the bullard grinder at Plant 2; that is a big surface grinder with a magnetic chug on it.

Q. Under what circumstances would you do that? Would it be at someone's request that you go to Plant 2?

A. Yes, they would send me over to Plant 2 to operate the bullard grinder. They didn't have anybody over there to operate it; at least, they told me they didn't.

Q. Whom do you mean by "they," the foreman?

A. Nichols.

Q. Ross Nichols? A. Yes. [223]

(Testimony of Lewis Gilpin.)

Q. Has he been foreman of the tool room since you have been in the tool room? A. Yes.

Q. He is the man that you say sent you over to Plant 2? A. Yes.

Q. Did anyone else ever send you over to Plant 2?

A. One night he and Davey sent me over there to operate the bullard grinder, to show the fellow, Handzel, how to operate it for grinding tools.

Q. Was that the Handzel on the witness stand here yesterday? A. That is right.

Q. Was that shortly after his employment, do you recall?

A. I would say that was around January, 1944.

Q. By the way, when you left the company what was your wage rate?

A. \$1.30, plus that 5-cent bonus.

Q. You were in the midst of telling us the machines you worked on in the tool room. Had you finished that?

A. I finished that because that is all they had there.

Q. You worked on all machines in the tool shop?

A. I forgot about the cutter grinder. I done a lot of cutting grinder; that means the cutters for mills out in production. We regrind them, sharpen them.

Q. In connection with you tool work, did you ever do any [224] work out in the machine shop, aside from the set-up work and setting up of the

(Testimony of Lewis Gilpin.)

jigs and fixtures you mentioned? The repair work, what would that involve, generally?

A. Well, if a machine happened to break, something inside of it, I would take the piece back in the tool room and make another one and I would go back and put it in the machine.

Q. To that extent you would be working in the machine shop?

A. No, I made the part in the tool room. All I would be doing out there would be replacing it in the machine.

Q. Just putting it back in?

A. That is all. I wouldn't be doing no production work.

Q. During the time you were in the tool room at Kinner's, in your observation was there anyone else on the night shift that did any maintenance or repair work, anyone else other than you that did any maintenance or repair work such as you have described on the machines?

A. The other two fellows that worked with me, that was Davis and Swope.

Q. Did they do similar work?

A. Yes.

Q. When I say "similar work" I mean the work you have just described, going out in the machine shop and replacing tools which they had worked on in the tool room. Is that your understanding of my question? [225] A. Yes.

Q. You mentioned Mr. Handzel, and made

(Testimony of Lewis Gilpin.)

the statement, I believe, that you broke him on some equipment.

A. On the bullard grinder in Plant 2, to show him how to operate it.

Q. At any time during your tenure, did you break in any other employees or show them how to operate machines?

A. No, I don't believe so. No, I didn't.

Q. Was your showing Mr. Handzel at the request of someone?

A. That was at the request of Nichols and Davey.

Q. Now, while you were at Kinner's did you ever hear of the classification of junior tool maker?

A. No.

Mr. Collins: I object to that, and move it be stricken on the ground that this man certainly isn't competent to determine what classifications Kinner may or may not have, the various classifications they may or may not have.

Trial Examiner Spencer: It is denied.

Q. (By Mr. Esterman): Have you ever heard anyone described, in the plant during that time, as a junior tool maker? A. No.

Mr. Collins: I object to that on the same basis.

Trial Examiner Spencer: Denied.

Q. (By Mr. Esterman): I believe your statement was that you [226] were hired in at Kinner's as a general machinist. What that your statement?

A. That is an all-around general machinist, all-around machinist.

(Testimony of Lewis Gilpin.)

Q. Who told you you were an all-around machinist, or were you hired as such?

A. Davey. He was the fellow I talked to.

Q. Now, at any time while you were with Kinner's were you ever advised by the company or by anyone connected with the company as to how you were carried on the company records with respect to your classification? A. No.

Q. As far as you know then when you left you were in the same classification as when you started?

A. That is right.

Q. You have stated you have operated surface grinders? A. Yes.

Q. Are you qualified to operate radial drills?

A. Yes.

Q. Have you operated them? A. Yes.

Q. Have you operated engine lathes?

A. Yes.

Q. Is an internal grinder different from an external grinder? [227]

A. Well, they have one that is a combination that is an internal and external; then they have grinders that are external only and some that are internal only.

Q. You have worked on all of those; have you not? A. Yes.

Q. And I believe you stated you worked on the boring machine? A. That is right.

Q. You have worked on a milling machine at Kinner's? A. Right.

(Testimony of Lewis Gilpin.)

Q. By the way, in connection with your tool making you work to particular tolerances, and I am speaking now of the accuracy under which you must do your work. Are there any particular tolerances you have to observe? A. Yes.

Q. Will you tell us what those are, if there is more than one?

A. Lots of it there was within two-tenths.

Q. Two-tenths of what?

A. A thousandth.

Q. Two-tenths of a thousandth?

A. That is right, up to five-tenths, which is a half thousandth.

Q. What is the operation of buffing and polishing, do you know? [228]

A. Yes, I know what it is. I never done any of it.

Q. Well, is it a comparatively simple operation or is it as skilled as some of the work you have done?

A. No, it isn't skilled. You could break a person in on it pretty easy.

Q. What does it involve, holding a part up to a revolving buffer?

A. A buffing wheel and buffing part.

Q. Do you know what a metalizer is?

A. No.

Q. Do you know what a Niteriding machine is?

A. No, I never heard of it.

Q. Niteriding?

A. No, I never heard of that before.

Q. You have never heard the expression?

(Testimony of Lewis Gilpin.)

A. No.

Q. Now, calling your attention to the 23rd of February, 1944—and I mention that date because it is the date that appears after your name on Board's Exhibit 3, indicating that on that date you were discharged, and that your classification was as a machinist, and that the reason for termination was "lack of work, tool room closed."

Calling your attention to that date, I will ask you if you reported for work on that date at the plant, Kinner's plant?

A. I did. [229]

Q. Approximately at what time?

A. At that time we was going to work at 5:30, 5:10 or something like that.

Q. Did you arrive alone, or was someone with you?

A. I arrived alone, but I met Davis there just at the gate.

Q. As you were coming in? A. Yes. [230]

Q. Did you both come in together?

A. Yes, we most generally always did if we met there, go in together.

Q. That was just before your shift started?

A. That is right.

Q. Will you tell us what happened? I might interrupt you from time to time.

A. We went in to punch our cards and the guard said we was wanted at the personnel.

Q. The card said that? A. The guard.

Q. I beg your pardon. Go ahead, Mr. Gilpin.

A. Jim went into the——

(Testimony of Lewis Gilpin.)

Q. By Jim you mean Davis?

A. Davis. He went into the rationing board there and—I don't know that part of it, what he told them.

Q. Tell what happened to you.

A. He came back out and we both goes over to the personnel. The lady in the personnel says, "Your checks are here."

Q. Do you know who that was?

A. No, I don't know her.

Q. Was it someone you had seen in the personnel office before?

A. Oh, yes, I had seen her before. I don't know her name.

Q. Keep your voice up. [231]

A. At that time I refused to take the check, until I found out more about what it was all about.

Q. Is that what you told her?

A. Well, I told her that I was going to find out first.

Q. Was Davis there at the same time?

A. Yes.

Q. What did he say or do?

A. He said he was going to do the same thing, until we could find out more about it.

Q. About this check. Now, before we go any further, were you advised that a check was there for you? A. By the——

Mr. Collins: I object to that as leading and suggestive.

(Testimony of Lewis Gilpin.)

Mr. Esterman: All right, I will withdraw the question.

Q. (By Mr. Esterman) What was said by anybody about the check at that time, first?

A. The first thing that was said, the girl said, "Your checks are here for you." And that is the time I refused to take mine. I wanted to find out what it was all about.

Q. That is what you told her? A. Yes.

Q. Did Davis tell her substantially the same thing?

Mr. Collins: That is objected to as leading and suggestive. [232]

Trial Examiner Spencer: Did Davis say anything? If so, what?

The Witness: I don't recollect whether he did or not right at that time.

Q. (By Mr. Esterman) Was Davis offered a check at that time? A. Yes.

Q. Did he take it? A. No.

Q. Very well. Go ahead.

A. And then Sullivan was sitting in his office, back there, and he called out to us and told us that he didn't know what this was all about.

Q. That was Mr. Sullivan who was on the stand here yesterday? A. Yes.

Q. When you say "us" you mean you and James Davis? A. That is right.

Q. Were you in his office or in another room when he said that?

(Testimony of Lewis Gilpin.)

A. I just walked into the door. That is all he told us. He didn't know what it was all about. Nick had called him up, that is, Nichols from the tool room and said he didn't have any more work for us.

So we went out of there to get our checks, to [233] check out our tools, and the Captain of the guard took us in. When we got over to the tool room, why, Nick was there, the foreman.

Q. Just a moment before you go ahead. I want to know if I understand you. Is it your testimony that Mr. Sullivan said to you, in substance, that——

Mr. Collins: It has been testified to. That is leading and suggestive. You are just repeating it. The record shows what he testified.

Mr. Esterman: Let me see if I understand the testimony.

Mr. Collins: It isn't a question of what your understanding of it is, Mr. Esterman. What he said is in the record. Go back and read it, if you didn't understand it.

Trial Examiner Spencer: Let's save a little time here. From my notes Sullivan called out and said he didn't know what it was all about, that Nick had called and said there was no more work.

Is that what you testified, in substance?

The Witness: Yes.

Q. (By Mr. Esterman) Did Mr. Sullivan say Mr. Nichols had called him and told him that?

A. Yes.

Q. That is what I am getting at.

(Testimony of Lewis Gilpin.)

Mr. Collins: I object to that as being leading and [234] suggestive.

Trial Examiner Spencer: Overruled. That is clearly what the witness intended to state, I think.

Q. (By Mr. Esterman) You were telling us about going out with the guard; is that right?

A. I was telling about the guard that took us over to where the tool room is in the plant.

Q. Go ahead.

A. And he told us, when we got over there, "I don't know anything about this."

Q. Who told you that? A. Nichols.

Q. Is that Ross Nichols you are talking about?

A. Yes.

Q. The tool room foreman? A. Yes.

Q. When you say Nick, you mean Ross Nichols.

A. Yes.

Q. What happened?

A. When he said he didn't know anything about it, I told him this had better be on the level. He didn't say any more to me about it. I went ahead over to my tool box and started to get my tools out, to be returned into the tool crib, and my checks.

Q. Did Mr. Nichols say anything to you at that time? [235]

A. Nothing only that part of it.

Mr. Esterman: I will ask the reporter to mark this document as Board's exhibit next in order.

(The document referred to was marked as Board's Exhibit No. 10, for identification.)

(Testimony of Lewis Gilpin.)

Q. (By Mr. Esterman) I show you a document which has been marked Board's Exhibit No. 10, and ask you if this is not, in fact, a document which you turned over to me or caused to be turned over to me a few weeks ago? A. That is right.

Q. And it was in your possession before that time? A. Yes, sir.

Q. What is this document?

A. Well, it is the termination.

Q. Is this something that was given you by the company at the time you left? A. It was.

Q. Will you tell us who gave it to you?

A. That was with our checks. This part of it was wrapped up with the checks (indicating).

Q. Did you get your checks the same night?

A. No.

Q. When did you get your checks?

A. The next night.

Q. You went back for it the next night? [236]

A. Yes. That was with the check (indicating).

Q. Did you discuss this Board's Exhibit 10 for identification with anyone connected with the personnel department? A. No.

Mr. Esterman: I offer at this time in evidence Board's Exhibit 10 for identification, for the purpose of showing the facts and circumstances surrounding the discharge of this witness by the company.

Trial Examiner Spencer: Is there any objection?

Mr. Collins: No objection.

(Testimony of Lewis Gilpin.)

Trial Examiner Spencer: It will be received.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 10, was received in evidence.)

BOARD'S EXHIBIT NO. 10

Deliver This Copy to the Worker at the Time
His Services Are Terminated

Use This Form Only for Reporting Termination of
Service Involving Possible Disqualification.

Social Security account number of worker 299-
01-4768.

Name of worker Lewis E. Gilpin.

Date of this notice February 23, 1944.

Last date individual worked February 22, 1944.

Date employer was informed of worker's termination of service if other than date entered in the preceding item.....

Employer's name and address must be typewritten or entered in ink.

Kinner Motors, Inc.

635 W. Colorado Blvd.

Glendale, California.

Do Not Ask the Worker to Sign This Form
Instructions for the Worker Appear on the Reverse

(Testimony of Lewis Gilpin.)

Termination Notice Concerning
Possible Disqualification
Cause of Termination of Service

Check item 1, 2, 3 or 4, or state the cause of separation under item 5. Present full explanation under item 6:

- 1 ☐ Left voluntarily
2 ☐ Discharged for misconduct connected
with his work
3 ☐ Worker not able to work
4 ☐ Worker not available for work
5 ☐ Other cause
6 ☐ Explanation Lay-off; lack of work.
No available work for this employee.

I Certify That the information given on this form is true and correct to the best of my knowledge and belief.

By

E. J. SULLIVAN M

Signature of individual completing this notice

California Department of Employment Affiliated
with Social Security Board.

Instructions to Worker for Use of Termination
Notice Concerning Possible Disqualification

As soon as possible, take this notice to the local employment office in the vicinity in which you live. If there is no United States Employment Service office in your town write the nearest office, asking when and where you can consult a representative of

(Testimony of Lewis Gilpin.)

the Department of Employment. It is important that you do this immediately, regardless of possible disqualification.

Do Not Destroy This Notice. Your employer is required to give it to you under the Regulations of the California Employment Commission.

If you file a claim for unemployment insurance or if you renew or continue a claim which was previously filed, Present This Notice as the time of registration for work and filing a claim.

You will be ineligible for unemployment insurance if the California Department of Employment determines that:

1. You quit your job without good cause (2 weeks ineligibility), or

2. You were discharged for misconduct connected with your most recent work without good cause (1-6 weeks ineligibility), or

3. You wilfully made a false statement or representation or wilfully failed to report a material fact to obtain unemployment insurance (4 weeks ineligibility).

You can not collect unemployment insurance when you are sick and unable to work.

If, without good cause, you refuse suitable employment when offered to you, or fail to apply for suitable employment when notified by the United States Employment Service office, you will be ineligible for unemployment insurance.

Failure to present this notice when filing a claim

(Testimony of Lewis Gilpin.)

for unemployment insurance may result in a serious delay in the determination of your insurance rights.

Warning: It is not necessary to employ anyone to help you collect benefits; someone in the local employment office will help you.

Q. (By Mr. Esterman) Now coming back to the night of your discharge. You stated that you had stopped and talked with Mr. Nichols. What happened after that? Was Mr. Davis with you at that time?

A. Yes.

Q. Then what did you do?

A. We checked our tools into the tool crib. They kept a fellow over time so we could get our tools checked in.

Q. You mean the tools——

A. Over from the day shift.

Q. ——which are property of the company?

A. Yes, little brass checks that you take tools out of the tool [237] crib on, and then return them when you terminate.

Q. You and Davis both did that at the time?

A. Yes.

Q. Then what did you do?

A. The guard, after we got our tool boxes, escorted us out.

Q. Now, did you go back to the plant again?

A. No.

Q. After that date?

A. No.

(Testimony of Lewis Gilpin.)

Q. You did say a moment ago, didn't you, you went back for your check?

A. Not in the plant, though. That is not in the plant, that is across the street from the plant.

Q. Is that the last time you were in the plant?

A. In the personnel office, yes.

Q. I mean, Mr. Gilpin, outside of the personnel office, the last time you were in the plant was the night that you have just described when you were escorted out by the guard?

A. That is right.

Q. In checking your tools? A. Yes.

Q. You haven't been in the plant since; have you? A. No.

Q. Did you go back the next day to the personnel office? [238] A. That is right.

Q. Were you alone or with someone?

A. No; Davis was with me.

Q. Tell me what you and Davis did with respect to the Kinner Company?

A. The next day when we went there, why, we got our check; that is all there was to it.

Q. Did you talk to anyone?

A. Nothing only just the girl.

Q. Did Davis talk to anyone?

A. There wasn't anybody there to talk to, outside of the girl in the office.

Q. What was the conversation with the girl?

Mr. Collins: I object to that as not binding on the company; incompetent, irrelevant and immate-

(Testimony of Lewis Gilpin.)

rial; no foundation laid; the discussion of the girl certainly wouldn't be binding.

Trial Examiner Spencer: I will hear it.

Q. (By Mr. Esterman) Answer the question.

A. Well, I just said, "This is an awful dirty deal." She said she didn't know anything about it. That is the substance of all we had to discuss with her.

Q. Was Mr. Sullivan in the office at the time you went back for your check? A. No. [239]

Q. Did you see him anywhere? A. No.

Q. By the way, what time of day was that, if you recall?

A. About 4 o'clock in the afternoon.

Q. Of the 24th?

A. Of the following day, the 24th.

Q. Now, prior to the 23rd of February, had anyone connected with management prior to the 23rd of February, 1944, had anyone connected with management—by that I mean foremen or persons of higher rank—either in the personnel office or superintendent's office told you that there was a lack of work at Kinner Motors? A. No, sir.

Q. Had any person in there that I have so characterized told you there would be or might be a layoff for that reason? A. No.

Q. Was the night of February 24, 1944, the first time you knew there might be a layoff for that reason?

A. I never knew it until I came to work.

Q. Until you went to get your time card?

(Testimony of Lewis Gilpin.)

A. That is right.

Trial Examiner Spencer: Were you told the night you were laid off or discharged why you were being laid off or discharged?

The Witness: I was not.

Mr. Collins: If the Examiner please, if I may have [240] the liberty of objecting to the question——

Trial Examiner Spencer: You have.

Mr. Collins: It is in the slip that was given to him, the reason.

Trial Examiner Spencer: He didn't get the slip until the next day.

Mr. Collins: It was there. He didn't take it, but it was there with his check that night.

Trial Examiner Spencer: Are you objecting to my question?

Mr. Collins: Yes.

Trial Examiner Spencer: All right. It is overruled.

Mr. Esterman: I understand the Examiner to be asking the witness if anyone told him orally why he was discharged.

Trial Examiner Spencer: That is right. You understood that?

The Witness: Yes.

Trial Examiner Spencer: Mr. Collins, you have the same privilege to object to my questions or move to strike testimony as if counsel for the board or any other party asked the questions.

(Testimony of Lewis Gilpin.)

Mr. Collins: I understand it really wasn't important. I probably merely should have called it to the attention of the Trial Examiner, rather than putting it in the form of an objection. What I mean to show was that instead of oral it [242] was by a written instrument.

Q. (By Mr. Esterman) Do you know Albert Stalker on the night shift? A. Yes.

Q. Do you know whether he went to work for the company before or after you did?

A. After I did.

Mr. Esterman: I might say that I am looking at Board's Exhibit 2.

Q. (By Mr. Esterman) I will ask you the same question about Fred E. Brown. Do you know him?

A. Fred E. Brown? There are several there. Yes, I know several of them.

Q. I am referring to Fred E. Brown listed on Board's Exhibit 2 as a machinist. Did you know a Fred E. Brown, a machinist?

A. Yes, I know him.

Q. Do you know whether he came with the company before or after you did?

A. He was there before I was.

Q. He was there when you came? A. Yes.

Q. How about Roy C. Walker?

A. Yes, he was there before I was.

Q. Did you know Henry Woodsford? [242]

A. Yes.

Q. Was he there when you came with the company? A. Yes.

(Testimony of Lewis Gilpin.)

Q. Was Alfred Woodsford there? A. Yes.

Q. Did you know Edward Anderson? He is listed here as a turret lathe operator.

A. Yes.

Q. Was he with the company when you came with them? A. Yes.

Q. Did you know Frank Keeley? A. Yes.

Q. Was he with the company when you came with them? A. Yes.

Q. Did you know Wallace Gerth? A. Yes.

Q. Was he with the company when you came with them? A. Yes.

Q. Now, directing your attention to the hearing in the prior case, which was conducted here in this room last December, did you attend any sessions of that hearing? A. I did.

Mr. Collins: Just a minute. May I have the answer stricken until I can interpose an objection?

Trial Examiner Spencer: Yes. [243]

Mr. Collins: I object to that on the ground it is incompetent, irrelevant and immaterial. Attendance out of curiosity to the hearing certainly couldn't be within the purview of this act.

Mr. Esterman: May I reply to that?

Trial Examiner Spencer: Yes.

Mr. Esterman: In the light of the questions I intend to ask, I think the attendance will have significance.

Trial Examiner Spencer: Very well. I will take it with the understanding you will provide a

(Testimony of Lewis Gilpin.)

link to the issues. The answer may be restored which I struck.

Q. (By Mr. Esterman) Now, the hearing took place in this room during four sessions, December 13, 15, 16 and 17, 1943. Just to refresh your recollection, the last day, December 17th, and I am looking at the transcript, it indicates that that particular session, the last day, was spent devoted almost entirely to all argument.

Were you present at any of those sessions?

A. I was present the first three days.

Q. You were not present then on December 17th?

A. No.

Q. You did not testify; did you?

A. No.

Q. Where did you sit in the hearing room?

A. Right back there where the Lieutenant is sitting now [244] (indicating).

Q. Are you indicating the second row of the three rows of seats? A. Yes.

Q. Were you present throughout those three days? A. I was.

Q. Did anyone sit with you, that is, right with you at the same place at anytime during those three days? A. Davis.

Q. Jim Davis? A. Right.

Q. You know, of course, he testified during the hearing? A. That is right.

Q. When he wasn't testifying, was he sitting with you? A. Yes.

(Testimony of Lewis Gilpin.)

Q. Did anyone else sit with you? Pardon me, was Davis present throughout the period that you were present for three days? A. He was.

Q. Did anyone else sit with you?

A. I can't recall.

Q. Who sat in the front row, if you know?

A. Well, one day there was Nichols.

Q. Who? A. Not Nichols—Johnson. [245]

Q. Is that Brian C. Johnson? A. Yes.

Q. And Davey? A. And Davey.

Q. Is that Mr. Davey, the superintendent?

A. Not Davey, I can't remember who they were.

Q. Was Mr. Sharrer in the hearing room any of that time? A. Malamphey was in here.

Q. Who is Malamphey?

A. Cliff Malamphey is assistant foreman, I take it, of the tool room. He takes over when the other one is not there.

Q. Mr. Sullivan was present during the hearing; wasn't he? A. He was.

Q. When he wasn't testifying, where did he sit, if you know? A. At the table.

Q. At the counsel table? A. Yes.

Q. Now, do you know Cadaret? A. Yes.

Q. He is generally referred to in the plant as "Caddy"? A. That is right.

Q. Was he present during that hearing?

A. I believe he was here one day.

Q. The record shows he testified. [246]

Now, at any time during those three days that you have referred to, did Mr. Sullivan speak to you

(Testimony of Lewis Gilpin.)

or to Mr. Davis in your presence when Davis was off the stand?

A. He didn't speak to me. I don't know about Davis.

Q. Did you speak to Mr. Sullivan?

A. No.

Q. Did you greet each other any time?

A. No.

Q. Did Mr. Sullivan indicate at any time whether he knew you were here or not?

A. He didn't act like it, so I didn't make no attempt.

Q. But he could have seen you?

A. That is right.

Mr. Collins: I object to that as calling for a conclusion of the witness.

Trial Examiner Spencer: I assume they were both in this small room, that they could have seen each other.

Mr. Collins: Certainly he certainly could have seen him; but whether he did or not, that is another thing. He certainly could.

Q. (By Mr. Esterman) Were you a member or are you a member of any labor organization?

A. I am.

Q. Which one?

A. The A. F. of L. Machinist local. [247]

Q. Is that the I.A.M.? A. Yes, sir.

Q. When did you become a member?

A. I belonged to the Machinist local several

(Testimony of Lewis Gilpin.)

times, two or three. In Akron, Ohio, I belonged. I belonged here in California.

Q. Were you a member when you came to Kinner's?

A. Not of the A. F. of L., but of the C. I. O.

Q. I am asking you, did you become a member or again become a member of the I.A.M. while you were at Kinner's? A. I did.

Q. When did that happen?

A. I think that was around—I can't remember just the date. It was somewhere in '43.

Q. Was it before the hearing in December?

A. I believe it was.

Q. Was it before the first of the year, 1944?

A. Oh, yes.

Q. In connection with that membership, were you given a button? A. I was.

Q. Machinist button? A. I was.

Q. Do you remember when that was given to you?

A. That was given to me the day I made out the application. [248]

Q. Did you ever wear that button?

A. I did.

Q. Did you ever wear it in the plant?

A. Yes, sir.

Q. Did you wear it all the time or part of the time or what was the fact?

A. I wore it all the time on my apron, on the top indicating).

(Testimony of Lewis Gilpin.)

Q. Do you have a machinist button with you?

A. No. I don't have one with me.

Mr. Esterman May I be excused for just a moment? I think I have one in my office.

Trial Examiner Spencer: Very well.

Mr. Esterman: I am showing the witness a black button that has red and white and gold printing on it. I am asking him if this is the kind of button or if it was a button similar to it.

A. That is the kind there (indicating).

Q. The button I have in my hand, which is perhaps slightly under an inch across, is black with an inner white border and carrying the legend, "Aeronautical Mechanics Lodge 758, I. A. M." Is that the kind of button you are speaking of?

A. Yes.

Q. Did you notice whether Davis and Swope, with respect to the period from January 1st to the time of your discharge, [249] whether they wore buttons like that or similar buttons?

A. They had buttons. I saw them wear them, yes.

Q. Did they wear them all the time?

A. I don't remember whether they wore them all the time. I would see them on them. I don't know whether they wore them all the time or not. I couldn't tell. They might come in with them on, maybe come in with it on their shirt and have the apron covered it.

Q. They did wear it sometimes in the plant?

A. That is right.

(Testimony of Lewis Gilpin.)

Q. And in the tool room?

A. That is right.

Q. Now, you were present throughout the hearing yesterday; were you not?

A. I was.

Q. Do you remember the witness, Mr. Dayhoff, who works for Kinner's?

A. Yes.

Q. Do you remember his being on the stand?

A. Yes.

Q. Do you remember generally the testimony on War Bonds?

A. I do.

Q. Do you recall his testifying there was some talking done by yourself and others on the subject of War Bonds?

A. Yes. [250]

Q. General conversation around the plant. Do you recall that testimony?

A. Yes.

Q. Will you state what, if anything, you said, or what your contribution was to those matters which the witness so described?

A. I would say that here or anywhere, that I thought anybody that would buy bonds for a profit while the boys was dying in France, wasn't very patriotic. I say give the money; they were giving their lives.

Q. Is that, in substance, what you said on the subject of War Bonds?

A. That is right.

Q. Did anybody ask you, while you were at Kinner's, to go to the Red Cross and give blood?

A. Yes.

Q. Did you attempt to do so?

(Testimony of Lewis Gilpin.)

A. No, sir, I was told not to.

Q. You made an attempt to donate blood?

A. I had donated before, and they told me not to do it any more.

Q. Who told you not to.

A. The doctor.

Q. Did you participate in any payroll deduction plan in connection with the purchase of Bonds?

[251]

A. Did I what?

Q. Participate in a payroll deduction plan?

A. I did.

Q. Was that throughout the time you were with Kinner's? A. It was.

Q. To what extent was deduction made from your pay checks? A. You mean how much?

Q. Yes. What percentage, if you know?

A. I don't recall what percentage they took out. I was supposed to get a Bond ever so often. I forget how many that is, what they told me. When I went in they took that much out of it.

Q. You didn't make any objection?

A. No.

Q. You consented to it, in fact? A. I did.

Mr. Collins: I object to that.

Mr. Esterman: I am asking if he consented to it.

Trial Examiner Spencer: He may answer.

The Witness: I did.

Trial Examiner Spencer: At the time you were discharged, how many persons, other than your-

(Testimony of Lewis Gilpin.)

self, were employed at the tool room at Plant No. 1 on the swing or night shift?

The Witness: Three. You mean from the time I went there? [252]

Trial Examiner Spencer: As of the date of your discharge.

The Witness: Three of us.

Trial Examiner Spencer: Three besides yourself?

The Witness: No, two besides myself.

Trial Examiner Spencer: Those two were——

The Witness: Davis and Swope.

Mr. Esterman: That is all.

Trial Examiner Spencer: What about the day shift, do you know whether they had a day shift in the tool room?

The Witness: They did.

Trial Examiner Spencer: Do you, of your own knowledge, know how many were employed on the day shift in the tool room as of the date of your discharge?

The Witness: I believe it was eleven.

Mr. Esterman: May I have the question?

(The record was read.)

Mr. Esterman: I was about to say I have no more direct examination. [253]

Q. (By Mr. Collins): How many people in the night shift did you discuss War Bonds with?

A. Anybody that said anything to me about them.

Q. How many? Can you name some of the people you discussed War Bonds with?

(Testimony of Lewis Gilpin.)

A. I can name one, but I don't know what his name is.

Q. Who?

A. He was from the office. I don't know what his name was.

Q. You don't know his name? A. No.

Q. What did you say to him?

A. I said just what I told you just awhile ago.

Q. What was that?

A. That I didn't feel that anybody that bought Bonds [278] for a profit instead of giving the money because the person over there was giving his life, that you should give it and not monkey with War Bonds.

Q. In other words, you said that you shouldn't buy Bonds, you should contribute to the Government? A. I said, "Give it."

Q. What did you say, though, about buying War Bonds? Anything else?

A. Didn't I just get through telling you?

Q. I am asking you if there was anything else.

Trial Examiner Spencer: Did you say anything further than you have already testified?

A. No, sir. I made that statement and I will make it again.

Q. (By Mr. Collins): In other words, you said you did not believe in buying War Bonds.

Mr. Esterman: I object to that.

Mr. Collins: This is cross examination.

Trial Examiner Spencer: Did you tell them that?

(Testimony of Lewis Gilpin.)

The Witness: No.

Q. (By Mr. Collins): You said you didn't believe in buying them, because instead of buying them you should give the money? Did anybody tell you that the United States was not receiving the money by way of gifts, but was using War Bonds? A. I knew that. [279]

Q. You knew that? A. I did.

Q. Still you said they shouldn't buy the War Bonds for that reason?

A. I still maintain they should do that; that is my own conviction.

Q. Have you given any money to the United States Government, instead of buying War Bonds?

A. I have for different hospitals.

Q. What hospitals?

A. Before I left Kinner's.

Q. When? What hospital?

A. I forget what that woman's name is in there. You can ask her.

Q. I asked you the name of the hospital?

A. I don't remember.

Q. I asked did you give any money to the United States Government instead of buying War Bonds?

A. No, I didn't, not directly; I didn't go to the President and give it to him.

Q. Did you give any to the United States Government? A. I did.

Q. You said a hospital. I am talking about the United States Government.

(Testimony of Lewis Gilpin.)

A. Doesn't that have anything to do with it; a Government [280] hospital?

Q. I am asking you now what Government hospital, then?

A. It is one of the Navy hospitals out here. I can't remember that name of that hospital. It has a funny name. I don't know what the name of the hospital is.

Q. Whom did you give the money to?

A. A girl that is in there, in the plant on the night shift.

Q. What girl? What is her name?

A. I told you I didn't know her name.

Q. What does she look like?

A. A tall, kind of blond-haired girl.

Q. What machine does she operate?

A. Drill press.

Q. Where in the machine shop?

A. Machine shop.

Q. What machine is it?

A. I just go through telling you a drill press.

Q. Which drill press? Where is it located?

A. In the machine shop.

Q. Where in the machine shop?

A. Do you want the corner?

Q. Yes, sir.

A. It isn't in a corner.

Q. All right. If it isn't in a corner, where is it in [281] the rest of the building?

A. Isn't that a heck of a thing to ask? About 10 or 15 feet inside the door.

(Testimony of Lewis Gilpin.)

Q. How much did you give her?

A. I don't remember just what it was, a dollar or something like that.

Q. Was it a dollar or what?

A. I will say a dollar.

Q. You will say a dollar? A. Yes.

Q. Was it a dollar? A. Yes.

Q. When did you give it to her?

A. On the night shift.

Q. I know, but what day of the month and what month?

A. I didn't pay any attention to the day of the month.

Q. Was it January?

A. I don't know whether it was January or not.

Q. Was it February?

A. I said I didn't remember.

Q. You don't have any idea at all? Could you give us within six months of the time?

A. Yes.

Q. All right. A. Around December. [282]

Q. Beg pardon?

A. December or January.

Q. Did she ask you for it? A. She did.

Q. Did you get any receipt for it?

A. I didn't.

Q. How many women work on that night shift?

Mr. Esterman: When?

Mr. Collins: At the time.

Q. (By Mr. Collins): At the time, how many

(Testimony of Lewis Gilpin.)

women were working on the night shift, at the time you gave this money? A. Two.

Q. Do you know their names?

A. I told you I didn't know the one. I don't even know the last name of the other one.

Q. Do you know her first name?

A. Just Cola. I don't even know how to spell it.

Q. That is the one you didn't give the money to?

A. No.

Q. Or is that the one you gave the money to?

A. No; that isn't the one.

Q. That is not the one? A. No.

Q. So if there were two of them, and one was named Cola, it would be the other one. [283]

A. That is right. [284]

Q. (By Mr. Collins): Now, Mr. Gilpin, did these views you had relative to the fact the Government should proceed by gifts to the Government than by the sale of War Bonds, did you discuss that with other people in the plant or did you discuss it with any of the day time employees?

A. I might have said that to anybody.

Q. How many people did you tell that to? Did you express that view to?

A. I don't know just how many.

Q. Didn't you go so far to tell some of the people there, in your opinion they should not buy War Bonds? A. I did not.

Q. Don't you recall you did that on several occasions? A. I did not.

(Testimony of Lewis Gilpin.)

Q. Didn't you tell them that the Bonds would be of no value after the war?

A. I told them just what I told you, and that is all.

Q. That is all. You didn't tell them the Bonds would be of no value after the war?

A. I did not.

Q. Did you ever hear Mr. Davis tell any of the employees at Kinner Motors that the War Bonds and War Stamps would be worthless after the war? [288]

A. I did not.

Q. Did you ever hear Mr. Davis say anything about War Bonds and War Stamps to the employees?

A. I don't know what Mr. Davis said about them.

Q. I didn't ask you that. I asked if you ever heard anything he said?

A. I don't know.

Q. Was he ever present when you made your remarks about War Bonds?

A. He might have been.

Q. Was he? A. I don't know.

Q. Were you ever present when he said anything to anybody about the buying of War Bonds?

A. I don't remember whether I was or not. I don't remember all that stuff.

Q. You mean it wasn't important?

A. It wasn't important, what he was talking about.

(Testimony of Lewis Gilpin.)

Q. What do you mean by speaking of War Bonds as being that "stuff"?

A. I said anything. It wouldn't make no difference whether it was War Bonds or not.

Q. You mean to say you have no recollection at all as to anything Mr. Davis said in your presence about War Bonds?

A. We probably discussed it, yes, between each other. [289]

Q. What was that discussion?

A. We discussed to see whether they would be any good. We don't know. We have a right to discuss it, though.

Q. What did you say?

A. I said we discussed it.

Q. All right. You discussed it. What did you say?

Trial Examiner Spencer: I assume that you want to know if he heard Davis make any statements in the presence of other employees?

Mr. Collins: Yes.

Trial Examiner Spencer: I don't intend to go into some private conversation between this witness and Davis.

Mr. Collins: I think that would be proper, too.

Trial Examiner Spencer: I would exclude it.

Mr. Collins: You would exclude it?

Trial Examiner Spencer: A private conversation.

Q. (By Mr. Collins): What did you hear Mr.

(Testimony of Lewis Gilpin.)

Davis say about War Bonds in the presence of other employees at Kinner's?

A. I said I didn't hear anything.

Q. Nothing. A. No.

Q. You mean by that, not that you don't remember, you just didn't hear anything; is that right?

A. I don't remember what he said; if he said anything [290] I don't know.

Q. Well, what do you mean, "I don't know"?

Mr. Esterman: I object to that.

Mr. Collins: I think we have to have that clarified.

Trial Examiner Spencer: The objection is sustained.

Q. (By Mr. Collins): Do you mean to tell us now for the record and to the Trial Examiner you never heard Mr. Davis say anything about War Bonds?

A. I told you between him and me.

Q. With other people being present?

A. There might have been, I don't know. I didn't pay any attention to who was around.

Q. Do you remember any conversation you had with him when other people were around? You just said they might be.

Mr. Esterman: Conversation about what?

Mr. Collins: About War Bonds. We are not talking about skilletts.

Mr. Esterman: The question is objected to as being vague and indefinite; calls for a reply, whatever it may be, which would be useless.

(Testimony of Lewis Gilpin.)

Trial Examiner Spencer: Well, I will take the answer. Let's get the answer.

Do you recall any conversation between you and Davis in which other employees of this company were present, when Davis said something about War Bonds? Do you recall it? [291] That is the question.

The Witness: Yes.

Q. (By Mr. Collins): All right. When was that? A. I don't know when.

Q. Well, about when?

A. May, December.

Q. In December?

A. Maybe January, I don't know when it was. An every day occurrence, we talked about different things.

Q. All right. Who was present on that occasion?

A. I believe Les Dayhoff was there once.

Q. What did Davis say?

A. He said what I told you just awhile ago, that he would rather give this money to the Government than to buy War Bonds, to make a profit off of the lives of the American soldiers.

Q. Did Mr. Dayhoff say if anybody in the United States felt that way we would have no war?

A. He didn't say what he thought.

Q. Didn't Mr. Dayhoff say at that time that if everybody felt that way, wouldn't buy War Bonds, we couldn't have production?

A. I don't remember what he said.

(Testimony of Lewis Gilpin.)

Q. What did you say?

A. I didn't say anything. You asked me what Davis said. [292]

Q. I am asking you now what you said.

A. I didn't say anything about it; that was their conversation, not mine.

Q. Did you ever have any conversation with Dayhoff?

A. Oh, yes.

Q. When?

A. You mean about Bonds?

Q. Yes.

A. Oh, I don't know whether I ever did or not, about Bonds.

Q. Use your best recollection. You say you don't know whether you did or not. Don't you know you really did have a talk with him?

A. No.

Mr. Esterman: Just a moment. I object to that. I think we should proceed by question and answer. We are here to elicit facts and not to argue with witnesses or to find out what the witness thinks about what they said at some prior time.

Mr. Collins: One of the best known forms of permissible cross examination is leading questions, your Honor. You might just as well cut off all cross examination if counsel hasn't the constitutional right of cross examining in the usual manner.

Trial Examiner Spencer: Do you know what you said [293] to this Mr. Dayhoff, if anything, about War Bonds? Do you recall?

The Witness: Do I have to repeat that same thing over again?

(Testimony of Lewis Gilpin.)

Q. (By Mr. Collins): Yes.

A. I told him I didn't think buying War Bonds for a profit for the lives of the American soldiers over there that were dying, I didn't think that was right.

Q. When you told him you didn't think it was right, what did Mr. Dayhoff say?

A. Well, he just said he didn't know.

Q. He said he didn't know. You heard him testify up here; did you? A. I did.

Q. Didn't he tell you he thought your views were very reprehensible?

Mr. Esterman: That is objected to because I can't tell from the question when he is supposed to have told the witness, whether counsel is talking about Dayhoff's testimony or whether it is a conversation between Dayhoff and the witness or a conversation in which they took part among others in the discussion of the subject of War Bonds.

Trial Examiner Spencer: At the time you made the statement to Mr. Dayhoff about the bonds, that you have testified you made, what did Mr. Dayhoff say, if anything? [294]

The Witness: He said he didn't know.

Trial Examiner Spencer: Did he say he thought your views on the matter were reprehensible at that time?

The Witness: No.

Q. (By Mr. Collins): Did he at any time, when you spoke to him about that? A. No.

Q. Do you know Mr. Gerth?

(Testimony of Lewis Gilpin.)

A. Yes, I know him.

Q. Did you ever have any talks with Mr. Gerth about War Bonds?

A. No, I never talked to him about them.

Q. Never at any time?

A. I might have, but I don't know. I might have talked to him, but I didn't talk about that. I talked about the machinery or something like that.

Q. When you say you might have, are you sure or are you not sure you talked to him?

A. I don't know.

Q. You don't know? Haven't you any recollection what you may have said to him about War Bonds? A. No.

Q. How about some of the other people on the night shift? Can you name some of the others you talked to about war Bonds? A. No. [295]

Q. You can't name a one you talked to about War Bonds? A. No.

Q. Can you name anybody on the day shift you talked to about War Bonds? A. No.

Q. You talked pretty generally to a lot of people along this line you have just testified here concerning the fact that you did not think buying War Bonds at a profit was right; is that right?

Trial Examiner Spencer: Did you say that to a number of employees?

The Witness: Yes, I have said that. Not only to employees, to anybody; I am saying it to you.

JAMES MACON DAVIS

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): You are James Macon Davis? A. That is right.

Q. You live where, Mr. Davis?

A. I live at 2300 North Parish Place.

Q. Will you talk up, please?

A. Burbank, California.

Q. You are the James Davis who is named in the charge and the complaint in this case; isn't that right? A. Yes, sir.

Q. You are also the same James Davis who testified at the prior case, to which there has been reference made here, on December 15, 1943, at least, in part, beginning at page 236—and I am showing you the index—and concluding with recross examination at 268; is that correct?

A. Yes, sir.

Trial Examiner Spencer: I think, just to have the record absolutely accurate, it would be better to give the [309] name and the title of the case. Will you again, please?

Mr. Esterman: The title of the case—and I am making this a part of my last question—being Kin-ner Motors, Inc., and International Association of Machinists, District Lodge No. 94, for and on behalf of Lodge 311, A. F. L.; Case No. 21-C-2307.

(Testimony of James Macon Davis.)

Q. (By Mr. Esterman): You are the same James Davis who was laid off on February 23, 1944?

A. Yes, sir.

Q. By Kinner Motors? A. Yes.

Q. Where are you now employed?

A. Bendix Aviation.

Q. How long have you been employed there?

A. Let's see, I believe I went to work there the 6th day of March.

Q. Have you been working there continuously since? A. Yes.

Q. At what work, please?

A. I am a tool and cutter grinder.

Q. What rate of pay?

A. \$1.20, plus 5-cent bonus.

Q. You are on the night shift?

A. I am on the swing shift.

Q. What was your rate of pay when you left Kinner's? [310] A. \$1.20, plus 5.

Q. You have been present here throughout this hearing thus far, have you not?

A. Yes, sir.

Q. You heard the testimony and examination of Mr. Gilpin on the subject of the gentleman whom Mr. Gilpin says came into the tool room and whom Mr. Gilpin couldn't identify? A. Yes, sir.

Q. You heard that testimony? A. Yes.

Q. You also recall Mr. Gilpin said you were present at that occasion? A. Yes.

Q. Were you present? A. Yes.

(Testimony of James Macon Davis.)

Q. Did you see that gentleman? A. I did.

Q. Do you know what his name is?

A. His name is Mr. Shaw.

Q. Do you know what he does in or with the company?

A. Well, at the time he was in charge of shop suggestions, and the pay-off of shop suggestions made by the employees, and also in charge of the bonds and stuff of that kind. Outside of that I don't know what his duties were.

Q. That was your understanding? [311]

A. That was my understanding.

Q. Did you hear this conversation concerning which questions were asked Mr. Gilpin, this conversation between Mr. Gilpin and the gentleman you now identify as Mr. Shaw? A. Yes.

Q. What was the conversation?

A. This gentleman, Mr. Shaw, approached Mr. Gilpin—I was standing just behind him.

Q. Louder, please.

A. And he asked Mr. Gilpin if he would sign up to buy more bonds.

Q. More bonds?

A. Yes, sir. Mr. Gilpin said no, that he didn't believe in buying bonds for a profit while the boys were shedding blood in Europe. He didn't believe in buying for a profit. He believed in giving them the money.

Q. Did Mr. Shaw say anything?

A. Mr. Shaw says, "I agree with you." He says, "I think that is the way it should be done."

(Testimony of James Macon Davis.)

Q. Was there any more to that conversation?

A. That is all I recall.

Q. Now, there has been some testimony in the record elicited on cross examination on the subject of cooking by yourself and Swope and Gilpin while you were employed by Kinner Motors. Have you seen anyone else doing any cooking [312] on the night shift at Kinner's?

A. Yes, sir.

Q. Tell us who.

A. Mr. B. C. Johnson, the night foreman of the machine shop.

Q. Is that Brian C. Johnson?

A. That is Brian C. Johnson.

Q. What have you seen him cooking?

A. Cooking soup, making coffee, roasting wienies; and that is all I recall of specific items.

Q. On more than one occasion?

A. On more than one occasion.

Q. Have you seen anyone else?

A. I have seen some of the employees making soup or coffee at different times.

Q. You mean in the machine shop?

A. Yes, and also on the day shift.

Q. You have seen that on the day shift?

A. Yes, sir, I have seen that on the day shift.

Q. In the machine shop?

A. In the final assembly.

Q. I didn't hear that.

A. Final assembly.

Q. Where is that in relation to the machine shop?

(Testimony of James Macon Davis.)

A. That joins the machine shop, on one side of the building. [313] Just a partition between them.

Q. Did you ever eat in the company canteen?

A. Yes, sir.

Q. When was the last time you ate there, if you know?

A. It was about, I would say, three months or three and a half months before my termination.

Q. After you stopped going to the canteen you cooked your own meals?

A. Yes, sir. Not all the time, but a majority of the time; sometimes I brought cold lunch.

Q. Did you make any of those trips outside that Mr. Gilpin spoke about, to a restaurant four or five blocks away? A. I did.

Q. Did you make any trips to another eating place about two or two and a half miles away?

A. Yes; about two or two and a half miles.

Q. What was your experience with the food at the canteen?

A. Well, on four different occasions I was sick. On this particular night, before we started cooking our meals, I was at the canteen and ordered two ham sandwiches. And while I was eating on the second sandwich I found a meat worm, a tapered worm in my ham. I immediately got up and put the worm on a napkin and carried it over to the personnel office in the company of Dick Swope, and showed it to Mr. Sullivan.

Q. You never ate there again; is that right?

[314]

(Testimony of James Macon Davis.)

A. No, sir, I never was inside the canteen again.

Q. Did you have your own cooking utensils or did they belong to the company?

A. I had my own.

Q. Were they given to you when you left?

A. No, sir.

Q. Did you take them with you?

A. No, sir.

Q. What happened to them?

A. One of the fellows from the day shift told Mr. Gilpin and myself they were distributed among the employees by the foreman, Ross Nichols.

Mr. Collins: I move to strike that as hearsay, that last answer, "I was told they were distributed."

Trial Examiner Spencer: It is hearsay. I will strike it on that ground. I do want the name of the employee that told him that.

What is the name of the employee that told you that?

The Witness: Jack Shelley. [315]

Q. (By Mr. Esterman): Have you ever heard any workmen at Kinner's referred to as a junior tool maker?

A. I never heard of that term before.

Q. Before you came to this hearing?

A. Before I came to this hearing.

Q. Now, you worked at Kinner's during what period? Give me the starting date.

A. I started to work for Kinner's October 13, 1941, and worked continuously for them until February 23, 1944.

(Testimony of James Macon Davis.)

Q. Was that all on one shift? A. No, sir.

Q. Will you indicate what shifts you worked on and approximately when you worked on them?

A. I worked about the first seven or eight months on the day shift, on the first shift. [316]

Q. What job? A. I was on sub-assembly.

Q. Of aircraft engines? A. Yes, sir.

Q. Go ahead.

A. I was transferred from sub-assembly to the machine shop, on the gear-hobbing machine.

Q. Did you say what shift you were on in the seven or eight months?

A. The day shift, No. 1 shift.

Trial Examiner Spencer: You were on the day shift when you were in the sub-assembly department?

The Witness: That is right.

Q. (By Mr. Esterman): Then you were transferred?

A. I was transferred onto nights, to run the gear-hobbing machine.

Q. How did that transfer come about, was it at your request?

A. It was: I had requested the transfer to the machine shop some time before.

Q. You mean you had asked for a chance at the first opening; is that what you mean? A. Yes.

Q. Apparently it came up and the company transferred you? A. Yes. [317]

Q. You were doing gear-hobbing how long? How long did you do that?

(Testimony of James Macon Davis.)

A. Off and on I did that about a year and a half.

Q. What happened then?

A. I started doing tool work along with the gear-hobbing.

Q. When you say off and on do you mean when you were off of it you were doing something else?

A. I was doing tool work, tool cutter, grinding and tool work in the tool room.

Q. At the same time you were doing the gear-hobbing in the machine shop?

A. Yes, sir.

Q. When was the next change, if any, in your status?

A. I did less all along—I did less and less work on the gear-hobbing machine, as there were two of us running the machine, one man on the day and one on the night and there wasn't enough hobbing to keep the machine running all the time. So the day man did most of the gear-hobbing and I worked in the tool room. Just occasionally I would help him out and run one or two nights.

Q. At whose direction did you proceed to do tool room work in addition to your gear-hobbing?

A. Mr. Ross Nichols.

Q. Who was he?

A. He was the day foreman. [318]

Q. Did the day foreman of the machine shop have anything to do with your performing these mixed operations?

A. Yes, sir. Mr. Davey or Mr. Swanson would often tell me, when there were a few shafts to run, that they would like for me to run them that night.

(Testimony of James Macon Davis.)

Q. You mean in connection with gear-hobbing.

A. Yes, sir, on gear-hobbing.

Q. You were ultimately transferred to the tool room exclusively, weren't you? A. Yes.

Q. About when did that happen?

A. About seven months before my termination.

Q. About the middle of 1943?

A. Something like that.

Q. Was that at your request or at the company's direction?

A. That was the company's direction.

Q. How did that come about? I mean who arranged it in the company, if you know?

A. Well, I got my instructions from Ross Nichols.

Q. He told you?

A. To work in the tool room.

Q. So you proceeded to go to work in the tool room? A. Yes, sir.

Q. That is where you were at the time you were laid off? A. That is where I was. [319]

Q. Now, you have had prior experience, have you not, working on machines? A. Yes, sir.

Q. And tools? A. Yes, sir.

Q. Now, prior to your tenure with Kinner Motors, where did you work immediately prior to your job at Kinner's?

A. I worked at Car Parts Depot, Incorporated.

Q. Where? A. El Paso, Texas.

Q. For what period?

(Testimony of James Macon Davis.)

A. From, I believe, in March, 1941, until October.

Q. 1941? A. '41

Q. What kind of a job did you have Car Parts Depot? A. I was doing machinist work.

Q. What kind of work did you do?

A. I was running piston cam grinder; also run a lathe and flash welders and did assembly.

Q. Flash welders? A. Yes, sir.

Q. What kind of assembly work? You did assembly work?

A. I did assembly work on motors, assembling motors.

Q. Airplane motors?

A. No, all kind of motors, outside of airplane.

[320]

Q. Did you work on any other machines at the Car Parts, other than the ones you mentioned?

A. I worked on the crankshaft grinder for a short time.

Q. Any others?

A. I used the bushing hone, which is known out here mostly as a lapping machine.

Q. L-a-p-p-i-n-g? A. Yes.

Q. Did you work on any other machines there?

A. I believe that is all I recall.

Q. Now, prior to March 1941, did you work anywhere? A. I worked at M & M Motors.

Q. Where is that?

A. That was in Midland, Texas.

(Testimony of James Macon Davis.)

Q. Did you tell us where the Car Parts Depot was? A. El Paso.

Q. El Paso. Thank you. How long were you with M & M motors at Midland?

A. About eight months.

Q. In what capacity? What was your job?

A. I was a mechanic and machinist.

Q. What kind of work did you do in Midland?

A. General automobile repairing, and we also had a lathe, boring mill and bushing hone, drilling press and wheel balancing or balancing machine.

[321]

Q. When you say you worked as a mechanic you mean you worked on the repair and maintenance of automobiles?

A. I worked on the repair and maintenance of automobiles.

Q. That covered what period, approximately?

A. That was about eight months before March, 1941.

Q. That would take us back, or you started around in July or August of 1940?

A. Somewhere around there.

Q. What did you do before December of 1940?

A. I worked for McDaniel's Garage and Machine at Petersburg, Texas.

Q. How long were you with that concern?

A. About 10 years.

Q. When you left McDaniel's Garage and Machine, what work were you doing? What work

(Testimony of James Macon Davis.)

were you doing towards the end of your time you spent with McDaniel's?

A. I was running a boring machine, doing acetylene and gas and flash welding of all types. And I operated a lathe part of the time and also did motor rebuilding, that is, automobile motors and irrigation welding motors and internal compulsion engines of all kinds.

Q. When you say rebuilding motors you mean you tore them down and put them together?

A. Yes.

Q. You worked on the internal part, that is, to grind [322] pistons——

A. Pistons and valves.

Q. Did they have a machine shop?

A. Yes.

Q. You did your work in the machine shop?

A. I did my work in the machine shop.

Q. In addition to your tearing down and building up the engines, what machines, other than the ones you named at McDaniel's, did you work on at McDaniel's?

A. At McDaniel's Garage?

Q. Yes.

A. I believe I have named the machines I used there.

Q. All right. Thank you. Now, with reference to the time you were with Kinner's—and when I say with reference to the time I mean the entire time—would you state, for the record, what equipment or machinery you did work on?

(Testimony of James Macon Davis.)

A. I have been on the filing machine, burring machine, buffing machine, shaper, jig borer, mills, bench lathe, engine lathe, cutter grinding, external and internal grinder and also a surface grinder.

Q. Did you work on a drill press?

A. Yes, sir.

Q. Have you named all the machines you can recall now?

A. I have used a bushing lapping machine, also.

Q. Did you ever work on a turret lathe? [323]

A. I never worked on a turret lathe.

Q. Did you ever work on a milling machine?

A. Yes, sir.

Q. At Kinner's? A. At Kinner's.

Q. When you hired in to Kinner's were you required to advise the company of your previous experience? A. Yes.

Q. Your previous work experience?

A. Yes, we filled out a form, application, that had a list of the different machines or operations that you had experience on.

Q. Did you give the company, in that application, substantially what you have told us in the way of information as to your previous experience?

A. I didn't list all the machines I had operated. The machines I left out I didn't care anything about operating if I could get the ones I wanted.

Q. You were concerned with the machines that you thought Kinner's had and you wanted to work on at Kinner's?

(Testimony of James Macon Davis.)

A. I put down machines I liked to run and was best at.

Trial Examiner Spencer: What is a radial drill?

The Witness: That is a drill that can be—the head can be swung around to any position for fast operations, lowered or raised. [324]

Trial Examiner Spencer: Have you been engaged on that operation while you were at Kinner's?

The Witness: No, I never run one while I was at Kinner's.

Trial Examiner Spencer: Did you ever at any time run one?

The Witness: No.

Q. (By Mr. Esterman): You have worked on a drill press; haven't you? A. Yes.

Q. Isn't it a fact that the only difference between a radial drill and a drill press is that in the case of a drill press the spindle is fixed?

A. Yes.

Q. In the case of a radial drill you can move the spindle?

A. The drill press, the drill head won't swing around, you can move the table sometimes. The only way the head moves is straight up and down.

Q. That is in the drill press? A. Yes.

Q. The radial drill, you can move the head without moving the table; isn't that right?

A. Yes, you can move it around to any location.

Q. Have you seen radial drills in operation?

A. Oh, yes. [325]

Q. In your opinion does it take any more skill

(Testimony of James Macon Davis.)

or less skill to operate a radial drill than a drill press?

A. I would say it takes less skill to run a radial drill. You don't have to move your job around. You can move the head, you can put your job stationary and move to the position you want quickly.

Q. At any time while you were with Kinner's, that is, until the 23rd of February, 1944, did anyone connected with management prior to that date say anything to you on the subject of or to the effect that the volume of work available was falling off?

A. No, sir.

Q. Was that the first date you heard that the work was falling off?

A. That was the first date. We always had plenty of work to do, and even had work ahead when we were off.

Mr. Collins: I move to strike that as not responsive.

Trial Examiner Spencer: I deny the motion. I want to ask the witness if he was advised on the date he was laid off that there was a lack of work.

Were you?

Mr. Collins: May I object to that question?

Trial Examiner Spencer: Surely.

Mr. Collins: That calls for a conclusion.

Trial Examiner Spencer: He was advised or not doesn't [326] call for a conclusion, Mr. Collins.

Mr. Collins: Beg pardon?

Trial Examiner Spencer: I asked the witness whether he was advised.

(Testimony of James Macon Davis.)

Mr. Collins: I didn't hear that, sir. I am sorry.

The Witness: I was not advised.

Mr. Collins: Might I call the attention of the Trial Examiner, as I did before, to the fact that the slip that he received advised him. I suppose you are speaking of verbally, in addition.

Trial Examiner Spencer: That is right.

Mr. Esterman: I understood it that way.

Trial Examiner Spencer: Did you understand I was asking you if you were advised verbally there was lack of work?

The Witness: Yes.

Trial Examiner Spencer: What was your answer to that?

The Witness: I said I was not advised. We didn't see this paper he is talking about until the second day after we were fired.

Mr. Collins: I move to strike that as a conclusion of the witness, upon the basis it was there and he didn't choose to look at it.

Trial Examiner Spencer: The motion is denied. When was the first time your separation slip was presented to you?

The Witness: On the 24th. [327]

Trial Examiner Spencer: Did you receive it at that time?

The Witness: On the 24th?

Trial Examiner Spencer: Yes.

The Witness: Yes, sir, I received my check and this slip, termination slip and also a refund on war bonds that I had been buying.

(Testimony of James Macon Davis.)

Trial Examiner Spencer: On the 24th of February?

The Witness: On the 24th.

Mr. Esterman: I intend, of course, to go into that, if the Examiner please.

Q. (By Mr. Esterman): You have told us you were the same James Davis who testified at the prior hearing; is that correct? A. Yes.

Mr. Esterman: At this time, Mr. Examiner, I offer for the record, for incorporation by reference, the testimony of this witness in the prior case, beginning at page 236 in the previous transcript, and specifically of December 15, 1943, and concluding at page 276. I might say that includes all the examination, direct, cross, redirect and recross.

[328]

Mr. Esterman: I will ask Mr. Collins if he will stipulate at this time if in the last hearing, in the prior case, last December, he was not, in fact, a member of the Board of Directors of Kinner Motors, Inc.?

Mr. Collins: Yes, I will so stipulate.

Mr. Esterman: I will ask him if he will stipulate that is still a fact.

Mr. Collins: Yes. [329]

Q. (By Mr. Esterman): Now, on the night of February 23, 1944, did you report for work as usual? A. Yes, sir.

Q. By that I mean at the usual hour?

A. Yes, sir.

Q. And that was about what time, Mr. Davis?

(Testimony of James Macon Davis.)

A. That was around 5:10.

Q. P. M.? A. Yes.

Q. Were you alone or were you with someone?

A. I was alone until I arrived in the parking lot and I met Mr. Gilpin at the gate, close to the gate, and proceeded to the clock room.

Q. What happened there?

A. I went in to punch my clock card, master card, and it was not in the rack.

Mr. Gilpin was behind me, and I turned around to say to Gilpin that I wondered where my card was, and before I could get the sentence finished one of the guards said, "You boys are wanted over at the personnel right away."

I said, "O. K." But that I had to step into the transportation office. I went into the transportation office and asked about some gasoline ration I had applied for several days before. The lady looked at me, Miss Gremmels looked at me kind of bewildered, and she said, "You are terminated. [330] Didn't you know it?"

I said, "No, I better go find out about it." So I went back outside and joined Mr. Gilpin and proceeded to the personnel office.

The guard stayed with us until we got to the front gate, and we crossed the street to the personnel office.

Q. All right. Did you both go into the personnel office? A. Yes, sir.

Q. What happened there?

(Testimony of James Macon Davis.)

A. Just as we entered the girl called from across the room and said, "Do you fellows want your checks?"

Mr. Gilpin says, "No, I don't know whether I do or not. What is the reason?"

She said, "I don't know anything about it." She looked down on the desk at some papers, and she said, "This says 'lay-off, lack of work.'"

About that time Mr. Sullivan, who was in his office, and the door was open, called out and says, "Boys, I don't know a thing about this." He said, "Nick just called me and said there wasn't any work for you."

Q. Had you said anything to Mr. Sullivan?

A. No.

Q. Had you directed any remarks to Mr. Sullivan before he said that? A. No. [331]

Q. Did he volunteer that to you?

A. He volunteered that to us.

Q. Had Mr. Gilpin said anything to Mr. Sullivan? A. No, sir.

Q. What happened then?

A. We discussed the gasoline book. He said before we could get our checks we would have to turn in the gasoline books.

Q. Who said that?

A. Mr. Sullivan. And Mr. Gilpin only had the cover, but he didn't have any stamps. So they told him they couldn't give him his check until he produced—they finally agreed—Mr. Sullivan agreed to take the cover in place of the tickets.

(Testimony of James Macon Davis.)

Q. Did you and Gilpin then leave? What happened then?

A. I asked the girl if I could use the telephone. She refused. She said, "We don't have a telephone available. The office is closed," or something of that kind. There was a public telephone on the grounds, hooked directly to the Glendale or some telephone office. [332]

Q. (By Mr. Esterman): What were you told?

A. She said there wasn't a telephone available.

[334]

Q. (By Mr. Esterman): Are you a member of any labor organization? A. Yes, sir.

Q. Which one? A. CIO.

Q. CIO what; any particular union?

A. United Automobile Workers of the CIO.

Q. Are you a member of any other labor organizations? A. Not at present.

Q. Have you ever been a member of any other labor organizations? A. Yes, sir.

Q. Which ones? A. A.F.L.

Q. Machinists?

A. Machinists, International Association of Machinists, A.F.L.

Q. Were you a member of the Machinists at any time while you were employed with Kinner's?

A. No, sir, I wasn't.

Q. Where were you a member of the I.A.M.?

A. In El Paso, Texas.

Q. When you came here, did you renew your membership in any other I.A.M. local?

(Testimony of James Macon Davis.)

A. No, I didn't renew the membership. I signed an [336] authorization card around, I would say around April or May of '43.

Q. Was that in Lodge 758?

A. I believe it was 311 at that time. I later filled out and transferred the card over to 758.

Q. You say you transferred. Do you mean the authorization? A. Yes.

Q. Were you, during your employment with Kinner's, active in connection with the attempt of the I.A.M. to organize the plant? A. Yes, sir.

Q. What was the nature of your activity, and indicate, if you can, when it took place?

A. Around the first part of 1943 the A. F. of L. were handing out a few handbills at the plant, at Kinner's. A few days after some of the handbills had been handed out I heard of a plan to organize the Kinner Motors Employees Association or a company union, as they called it, at that time.

Q. Will you bear in mind, in your answer to my question, that I am asking you for your activity in connection with the I.A.M. efforts to organize the plant. You are keeping that in mind?

Mr. Collins: You are referring to the I.A.M.?

Mr. Esterman: I.A.M., International Association of Machinists. [337]

Mr. Collins: That is a branch of the A. F. of L., affiliate?

Mr. Esterman: I don't think these gentlemen will accept that. It is a part of it.

(Testimony of James Macon Davis.)

Trial Examiner Spencer: Why not agree to use the title "Machinists," whenever that is used it refers to the I.A.M. Will that be satisfactory?

Mr. McGraw: That is our common name.

Mr. Collins: That is all right with me.

Trial Examiner Spencer: It will save some confusion if we have one name to use throughout.

Q. (By Mr. Esterman): My question went to your activity in connection with the attempt of the Machinists to organize the plant. Will you keep my question in mind in replying? I am not interested in other matters if they don't bear on your efforts to help. Do you understand that?

A. Yes.

Q. Will you go ahead with your answer?

A. I don't understand the question just exactly.

Trial Examiner Spencer: As I understand it counsel wants you to describe your activity in connection with the Machinists organization of Kinner's employees. What did you do in that connection, if anything?

Q. (By Mr. Esterman): That is, the Machinists' attempt to organize. Do you understand it now? [338]

A. Yes, sir. I handed out a few cards, authorization cards.

Q. When was that, if you know?

A. That was, I would say, around July or August.

Q. 1943?

A. And also since the hearing.

(Testimony of James Macon Davis.)

Q. You mean since the December hearing?

A. Since the December hearing.

Q. You handed authorization cards to employees of Kinner's?

A. Yes, sir.

Q. Do you recall approximately when you last passed out any authorization cards?

A. I would say the last—around February the 15th.

Q. 1944?

A. Yes.

Q. Did you attend any meetings of Lodge 758?

A. Yes, sir, I did.

Q. How many meetings did you attend?

A. I believe I was there at two meetings; not any more than two.

Q. In Glendale?

A. No, in Burbank.

Q. Did you, at any time, wear a Machinists' Union button in Kinner's plant?

A. Yes, sir, I wore it, I would say, outside of just a few [339] nights all the time.

Q. Did you wear it all the time outside of the few nights since last December until you were laid off?

A. Yes, sir.

Q. When did you start wearing the button, if you know?

A. I started wearing a button, I believe it was in the latter part of December or January, first part of January.

Q. Of this year?

A. Yes, sir.

Q. Did you wear that on your work clothes when you were working?

A. Yes.

(Testimony of James Macon Davis.)

Q. Is that button similar in nature or the same as the button I described in this record in connection with a previous witness? A. Yes.

Q. Was it a black button about the size of a 25-cent piece? A. Yes.

Trial Examiner Spencer: Physically, where were you when you handed out these authorization cards?

The Witness: I was in the parking lot. Also at the lunch hour; we usually went outside the building. Sometimes we would go out for five or ten minutes outside the plant to get a little fresh air at the lunch period.

Trial Examiner Spencer: Did you hand any of them out in- [340] side the plant at all?

The Witness: I don't recall.

Trial Examiner Spencer: We will take a short recess. We will take about 10 minutes.

(Short recess taken.)

Trial Examiner Spencer: On the record.

Q. (By Mr. Esterman): You stated earlier in your testimony, Mr. Davis, that you were a member of the CIO-UAW; is that correct?

A. Yes, sir.

Q. When did you become a member of the CIO?

A. After I went to work for Bendix, which is under CIO contract.

Q. That is the reason you joined the CIO?

A. That is the reason I joined the CIO.

Mr. Esterman: Will you please mark this for identification?

(Testimony of James Macon Davis.)

(Thereupon, the document referred to was marked Board's Exhibit No. 11, for identification.)

Q. (By Mr. Esterman): I show you a document which the reporter has identified as Board's Exhibit No. 11, and I ask you if this is not, in fact, the notice which was handed to you at the same time you got your check from Kinner's; is that correct? A. Yes, sir. [341]

Q. Was this received by you with your check the day after you were laid off?

A. Day after.

Q. 24th of February?

A. 24th day of February.

Q. Did you go back there with Lewis Gilpin?

A. Yes, sir.

Q. At the same time? A. Yes, sir.

Q. Did you personally talk to anyone connected with the company at that time?

A. I talked to Mr. Sullivan's assistant, a lady that is employed in the personnel office.

Q. Do you know her name?

A. No, I don't know her name.

Q. Was it about your lay-off? Was your conversation about your lay-off?

A. No, I went back after my check on the 24th day of February.

Q. Well, was the conversation with this assistant on the subject of your lay-off?

A. Yes, sir.

(Testimony of James Macon Davis.)

Q. You discussed it with her?

A. I told her I was ready for my check at that time.

Q. She gave it to you? [342]

A. She gave it to me.

Q. Was that, in substance, what was said?

A. That was all the conversation I recall with her.

Q. Did you see Mr. Sullivan on that day?

A. No, I didn't see Mr. Sullivan.

Mr. Esterman: At this time I offer in evidence a document which has been marked as Board's Exhibit 11 for identification.

Mr. Collins: No objection.

Trial Examiner Spencer: It is received without objection.

(Thereupon, the document heretofore marked Board's Exhibit No. 11, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 11

Deliver This Copy to the Worker at the
Time His Services Are Terminated

Use This Form Only for Reporting Terminations
of Service involving Possible Disqualification

Social Security account number of worker
456-09-9984

Name of worker James M. Davis

Date of this notice February 23, 1944

Last date individual worked February 22, 1944

(Testimony of James Macon Davis.)

nected with your most recent work without good cause (1-6 weeks ineligibility), or

3. You wilfully made a false statement or representation or wilfully failed to report a material fact to obtain unemployment insurance (4 weeks ineligibility).

You can not collect unemployment insurance when you are sick and unable to work.

If, without good cause, you refuse suitable employment when offered to you, or fail to apply for suitable employment when notified by the United States Employment Service office, you will be ineligible for unemployment insurance.

Failure to present this notice when filing a claim for unemployment insurance may result in a serious delay in the determination of your insurance rights.

Warning: It is not necessary to employ anyone to help you collect benefits; someone in the local employment office will help you.

Mr. Esterman: May I see the personnel records that are here, particularly the one of Mr. Davis?

Mr. Collins: Yes.

Trial Examiner Spencer: Off the record.

(Discussion off the record.)

Trial Examiner Spencer: On the record.

Q. (By Mr. Esterman): Now, you heard the testimony, the examination of Mr. Gilpin on the subject of war bonds; did you not?

A. Yes, sir.

(Testimony of James Macon Davis.)

Q. While you were employed by Kinner Motors did you [343] participate, by way of payroll deductions, for war bond purchases? A. I did.

Q. To what extent, if you remember?

A. I believe I was getting a bond every two months.

Q. What kind of a bond, what size?

A. \$25.00 bond.

Q. Every two months? A. Yes, sir.

Q. Did anyone connected with Kinner Motors tell you on or about February 23rd verbally you were being laid off or discharged?

A. No, sir.

Q. Do you know, in fact, who laid you off or had you laid off? A. I do not know.

Q. Now, you and Gilpin and Swope were the only three, at least between December of last year and the time you left, working in the tool room on the night shift; is that not correct?

A. That is right.

Q. You three were pretty friendly, were you not, outside of working hours? A. Yes, sir.

Q. You saw a good deal of each other? [344]

A. Yes, sir, we had visited in the homes of each other.

Q. Your families were acquainted?

A. Yes, sir.

Q. You spent some time together outside of the plant? A. Yes, sir.

Q. Now, the record shows, of course, you testified at the prior hearing. And it also shows that

(Testimony of James Macon Davis.)

three days were occupied in taking testimony in the prior case. You testified on one of the four days or at least on one of the three days when testimony was taken. How many of the four days were you present in respect to that hearing, in this hearing room?

A. I was here every day but the day of the argument, the last day. I left before the argument was over. I didn't stay for that.

Q. Did you hear anything of the argument?

A. No, I came up here to hear the argument, and after I got up here I didn't feel good so I decided to go home. I was pretty tired after missing all that sleep.

Q. You were present throughout the hearing, during the three previous days; is that correct?

A. Yes.

Q. When I say "throughout" I mean from the beginning to the end of each session?

A. Yes.

Q. When you weren't testifying, where did you sit in the [345] hearing room?

A. Most of the time on the second row from the front (indicating).

Q. Indicating a second of three rows of the benches; is that correct?

A. Yes.

Q. Did anybody sit with you when you were sitting in the second row?

A. Mr. Gilpin was with me two of the days, and Mr. Swope was with me the other day.

Q. Were any representatives of management,

(Testimony of James Macon Davis.)

other than those who testified—I will withdraw that.

Did any representatives of management—by representatives of management I mean foremen or personnel men or administrators or supervisors—sit in any of those three rows during the time that you sat there, during the hearing? A. Yes.

Q. Will you name some of them?

A. Mr. Davey.

Q. He is the superintendent?

A. He is the works manager of Plant 1.

Q. Where did he sit, if you recall?

A. He was sitting on the front row.

Q. Was he present throughout?

A. No, he was here one day that I know of. I don't know [346] whether he was here another day. I don't remember. I know he was here one day.

[347]

Q. (By Mr. Esterman): You mentioned Mr. Davey was there. Were any other representatives of management sitting in the hearing room during the course of the hearing in those three rows of Benches?

A. Mr. Sullivan was sitting at the table. And Mr. Johnson.

Q. Is that Brian Johnson?

A. Brian C. Johnson was sitting on the front bench with Mr. Davey.

Q. That was when Johnson wasn't testifying?

A. Yes.

Q. How much time did Johnson spend here, if you know?

(Testimony of James Macon Davis.)

A. I believe just the one day was all he was here.

Q. Was Ross Nichols present at any time during the hearing?

A. I don't believe he was; I am not sure.

Q. Now, did any of the gentlemen whom you have mentioned as being representatives of management at any time, during the hearing and while you were sitting back there, indicate they recognized you in any way?

A. Well, they passed by me at different times going out to the hall or coming in. And I also was up and back to the door [348] and back by them several times probably during the day.

Q. Did they greet you or say "hello," or anything of that sort?

A. Not that I recall.

Q. Your foreman during the time you worked in the tool room was Ross Nichols; was he not?

A. That is right.

Q. He was your foreman during the time of the hearing and he continued to be your foreman until the time you left the plant; isn't that right?

A. Yes, sir.

Q. Until February, 1944?

A. Except for a period of about five or six weeks, in which Cliff Malamphey was acting in his place.

Q. Cliff Malamphey? A. Yes.

Q. Is that M-a-l-a-m-p-h-e-y?

A. I believe that is right.

(Testimony of James Macon Davis.)

Q. Can you indicate when that period was?

A. That was, I think, around July or August of '43. Mr. Nichols was on his vacation.

Q. Malamphey acted in Nichols' place?

A. Yes. I am not sure about the time that he was on his vacation, but he was out five or six weeks.

Q. What did Malamphey do when Nichols was there, what was [349] his job, if you know?

A. His job was to give out the work for the day crew, as well as the night crew.

Q. You mean in the tool room?

A. Yes. He did more or less of that all the time since I have been employed in the tool room all along.

Q. Did he give work out to you and Swope and Gilpin? A. Yes.

Q. By that you mean he would assign you to particular work? A. Oh, yes.

Q. Did he do any work, productive work in the tool room himself?

A. Some, not a great lot. He took care of the raw stores and material out of the boat bins and out of the stock bins that supplied the bronze and special screws and that type of stuff.

Q. Now, calling your attention to the period prior to the December hearing and during that period were you and Mr. Nichols pretty friendly?

A. Yes, sir.

Q. Was the same thing true as to you and Mr. Malamphey, Cliff Malamphey? A. Yes.

(Testimony of James Macon Davis.)

Q. Did either of them, at any time prior to December, find [350] any fault or criticize your work?

A. If they did I didn't know it.

Q. Did they ever criticise it to your face?

A. No.

Q. That is, neither one of them did, is that correct? A. That is right.

Q. With respect to the period after the hearing was your work—by that I mean your work personally—criticised or any fault found with it by either of the men I have mentioned?

A. Yes, I believe two different times.

Q. Would you tell us what those times were and the circumstances were?

A. About the following week after the trial was over Mr. Nichols found fault with a threading job I had done on some gear puller legs.

Q. Tell us what he said.

A. He said when I came in that evening and reported for work, he said, "Come here a minute. I got something I want to show you." He said, "These threads are off center." He said, "How could you account for that?"

I said I used a geometric head and if it is off center it was a head—it was an automatic threading head I used.

Q. Was that all there was to that discussion?

A. That is all there was to that one. [351]

Q. Was that Malamphey that told you that?

A. That was Ross Nichols.

(Testimony of James Macon Davis.)

Q. Had you ever cut any of those—what do you call that operation? A. Cutting threads.

Q. On what?

A. On round material. They were bearing puller legs, special bearing puller for the motor.

Q. Had you ever cut threads on a similar job before? A. Yes, sir.

Q. Had you ever been told the threads were off center by Mr. Nichols? A. No, sir.

Q. Or by Mr. Malamphey? A. No, sir.

Q. You said there were two instances in which your work was criticized? A. Yes.

Q. You have given us one? A. Yes.

Q. What was the other one, if you recall?

A. The other was a job of grinding on finning tools to cut the fins, tooling fins on cylinder barrels.

Q. What happened in connection with that?

A. He gave me the job, this particular job—I had never [352] liked the job much.

Q. Who is “he”?

A. Ross Nichols. And I never had liked that job very well. And I told Nichols in a joking way several times I hadn’t been very crazy about that job, grinding those tools. And he gave me a new way to do them, which I didn’t approve of the way, but I didn’t say anything.

Q. When you say “new” you mean a way you hadn’t been doing it?

A. It was a different way to grind it.

Q. It was different to you, is that what you mean by “different”? A. Yes.

(Testimony of James Macon Davis.)

Q. Go ahead.

A. I worked on those tools about a week, about six nights, I would say. And when I had them all finished the sizes were good, but the lines left from the grinding done this particular method were horizontal,—I mean vertical with the cutting edge, which wasn't good.

Q. You mean you didn't think so, is that what you mean?

A. Yes. And he asked me to take them to the surface grinder and grind those lines off, but hold the front edge to size, which was almost an impossibility.

Q. Now, when you said this method was new to you, had you ground these particular items in some other way in the past? [353]

A. Yes, sir.

Q. Did you tell him, or was it your opinion at that time that method which he suggested was improper or the wrong way to do it?

A. Yes, sir. I didn't tell him so, but I was thinking of it.

Q. That was your opinion?

A. That was my opinion.

Trial Examiner Spencer: Well, did he criticise this grinding job?

The Witness: He said that the finish on them wasn't good enough.

Trial Examiner Spencer: Is that all he said about it?

(Testimony of James Macon Davis.)

The Witness: That is all he said, yes, sir. To go and grind them on the surface grinder.

Q. (By Mr. Esterman): Now, you knew Mr. Sullivan, of course, when you worked at Kinner's?

A. Yes, sir.

Q. Were you, prior to the December hearing, and Mr. Sullivan pretty friendly?

A. Well, he always spoke and so did I any time we happened to meet.

Q. Did you see him quite frequently in the shop?

A. Yes, I saw him quite frequently.

Q. Daily or every other day or what? [354]

A. At least every two or three days.

Q. When you saw him you would speak to him and he would speak to you; is that right?

A. Yes.

Q. Now, with respect to Mr. Nichols and Mr. Malamphey and Mr. Sullivan, and with respect to the period between the hearing and the time you were laid off, did you personally notice any change in the attitude of any of them or all of them, with respect to whether they were still friendly, as you have just testified?

A. Oh, yes, I noticed quite a change.

Q. Would you explain your answer?

A. Mr. Nichols and I had, before the hearing, been very friendly, and I had done some work on his personal car and he and I also were talking about a little invention we were going to make for his type of car, fluid drive. He was very enthused

(Testimony of James Macon Davis.)

about this little item we had in mind. But after the hearing he quit—he had a changed attitude. He didn't talk to me freely or have anything in particular to say, outside of laying out the work. He didn't go out of his way to make any conversation, outside of giving out the jobs.

Q. The only things you discussed with him after the hearing were matters concerning your immediate work for Kinner's? A. Yes, sir.

Q. What was the situation with respect to Mr. Malamphey? [355]

A. There was quite a change in Mr. Malamphey.

Q. Would you explain that answer, please?

A. The following day, after Mr. Malamphey was on the stand here in the trial back in December, he approached me just after I came to work, and Mr. Gilpin was also with me. He said, "You guys didn't have any business bringing my name up down at the hearing." He was quite heated up about it.

Q. Tell us what he said, if he said anything.

A. He said, "You guys didn't have any business bringing up my name down at the hearing."

Q. Have you now explained your answer with respect to Mr. Malamphey?

A. That explains that conversation.

Q. Was he any more or any less friendly with you after the hearing, in your opinion?

A. He was a lot less friendly.

Q. I will ask you the same question with respect to Mr. Sullivan, with respect to the same period, that is, after the hearing.

(Testimony of James Macon Davis.)

A. After the hearing Mr. Sullivan, as I know, never spoke to me after the hearing.

Q. Did you ever pass each other in the plant?

A. About a week or maybe ten days after the hearing I met him face to face at the corner of the plant, between the front office or the administration building, as it is called, [356] and the shop, machine shop. He refused to speak, and even turned his head.

Q. You have mentioned, in your testimony, Mr. Davey. I think you said he was the works manager; is that right?

A. Yes.

Q. Were you and he pretty friendly before the December hearing?

A. Yes, sir.

Q. Did you see him in the plant from time to time?

A. I saw him practically every day.

Q. Did you speak to him and did he speak to you on those occasions?

A. Oh, yes.

Q. Did you notice any change in his attitude, so far as you were concerned, after the hearing?

A. Yes, sir.

Q. Will you indicate what you mean by that answer?

A. After the hearing I don't recall any conversation that I had with Mr. Davey.

Q. Did you have occasion to met him or see him just as frequently as you had before?

A. I saw him pass but he didn't even look my direction. Maybe he did look my direction sometimes, but if he did he didn't notice me. [357]

(Testimony of James Macon Davis.)

Q. (By Mr. Esterman): Calling your attention to approximately the early part of December, about two or three weeks before [360] the hearing, I will ask you if you had occasion to engage in a conversation with works manager Davey on the subject of your work? A. Yes.

Q. Who was present at that conversation?

A. Just Mr. Davey and myself.

Q. It was in his office?

A. It was in his office.

Q. Will you tell us what the conversation was on that subject?

A. I was in his office asking for a raise, and also asked for my availability, unless I could get more money for what I was doing, the job I was doing.

Trial Examiner Spencer: By "availability" you mean you sought a job release?

The Witness: Yes.

Q. (By Mr. Esterman): Go ahead, Mr. Davis.

A. And he was in a very good mood. He told me that he could, a little bit later, see that I was taken care of on the money end of the deal. He says, "Your work has been very satisfactory." And he says, "I have put you up as an example for some of the other fellows, showing the advancement they can get in Kinner's when they do their work and do it good." And he also said, "Your friend Gilpin is the best man I have got in the tool room." He said, "I don't know what I would [361] do without him."

(Testimony of James Macon Davis.)

Q. Calling your attention to the time just prior to the hearing——

Trial Examiner Spencer: Prior to the prior hearing?

Mr. Esterman: Yes, to the December hearing.

Q. (By Mr. Esterman): Did you aid the Field Examiner of the Board in obtaining any information or data in connection with the prior case?

A. I didn't understand that question.

Q. Did you help Mr. Ogren in connection with the preparation of the prior case?

A. I made testimony.

Q. You testified in the case?

A. I testified.

Q. How many nights a week were you working at the time you were laid off?

A. How many nights a week?

Q. Yes. What was the work week?

A. Six nights.

Q. How many hours a night?

A. Ten hours a night.

Q. How long had that situation been going on? How long had you had that kind of a week?

A. Around that 60-hour week, it started around in January, I believe, some time. [362]

Q. 1944?

A. I believe that is right.

Q. What had the work week been prior to January?

A. We worked—before that we worked three eight-hour nights and three ten hours nights.

Q. That would be 54 hours a week?

(Testimony of James Macon Davis.)

A. Yes.

Q. Did you at any time put in any overtime above the 60 hours? Did you at any time work over 60 hours a week?

A. Not for quite some time.

Q. Did you at any time work more than 60 hours?

Mr. Collins: I object to that as being incompetent, irrelevant and immaterial.

Q. (By Mr. Esterman): From the first of the year, until the time you left, did you ever work more than 60 hours a week?

A. No, I don't think so.

Q. Now, you and Swope and Gilpin, at least, as far as your working hours are concerned, were together constantly; were you not? You were together all the time?

A. Most of the time. Part of the time—some of the tool room equipment was located outside of the tool room. It was in the machine shop, but it belonged—it was really tool room equipment and was used as such. [363]

Q. Prior to the December 1943 hearing, did you know whether Mr. Sullivan was at all friendly with Gilpin and Swope?

Mr. Collins: I object to that as calling for a conclusion.

Q. (By Mr. Esterman): Upon your own observation.

Mr. Collins: That certainly calls for a conclusion; incompetent, irrelevant and immaterial.

Trial Examiner Spencer: I don't think it has

(Testimony of James Macon Davis.)

much weight. If you want to ask it, though, I will take it.

The Witness: As far as I know; I am not in a position to answer that.

Q. (By Mr. Esterman): You didn't observe whether they were or not?

A. No, I didn't know whether they were or not. I would like to add something to that.

Trial Examiner Spencer: He wants to add something to his answer.

Mr. Esterman: All right.

The Witness: On the question that was asked about hours.

Trial Examiner Spencer: All right.

The Witness: Whether we worked over 60 hours a week.

Trial Examiner Spencer: From January 1st to the time you were discharged.

The Witness: From January 1st? [364]

Trial Examiner Spencer: Or laid off.

The Witness: We didn't work any hours above the 60. The day crew went on seven days a week starting February 20th.

Q. (By Mr. Esterman): What had been the schedule on the day crew before?

A. Six days a week.

Q. Was that the situation when you left, that is, seven days on the day crew? A. Yes, sir.

Q. Is that what you wanted to add to your previous answer? A. Yes, sir.

Mr. Collins: I didn't just catch that. The reporter can read that.

(Testimony of James Macon Davis.)

Trial Examiner Spencer: Read it.

(The record was read.)

Trial Examiner Spencer: Proceed, Mr. Esterman.

Q. (By Mr. Esterman): Now, what has been your observation with respect to whether more different machines are in operation on the night shift or the day shift?

Mr. Collins: I object to that as incompetent, irrelevant and immaterial.

Trial Examiner Spencer: Do you know how many are in operation on the day shift? Have you observed it? Do you know it? [365]

The Witness: Yes, sir, I know the operation, and it is a much greater variety on the night shift than the day shift, owing to the fact there was only three of us on the night shift, to use all the machines in the tool room and there were 11 men on the day shift. That was more or less on one machine. In other words, we had a variety and worked our job straight through. And also part of the machines that belonged to the tool room were doing production work in the day time and were not available for the day crew, but were available for the night crew for highly precision grinding.

Q. (By Mr. Esterman): In connection with the tool work, you mean?

A. In connection with the tool work, highly precision grinding.

Q. Now, the function in general of the tool room is, is it not, to make and repair and main-

(Testimony of James Macon Davis.)

tain particular tools of various kinds that are used or set in a machine for the use in production in the machine shop; is that a fair statement?

A. Yes, sir. [366]

Q. (By Mr. Esterman): About how many people worked on the night shift on production or were working on the night shift on production at the time you left?

A. Well, let's see, I would say there was about nine.

Q. Do you know, from your own observation, how many there were on the day shift, working on production in the machine shop?

A. No, there were quite a number.

Q. More than nine?

A. Oh, yes. Yes; a lot.

Q. A great many more?

A. A great many more on the day shift than there was on the night shift.

Q. In your opinion, Mr. Davis, is it possible to operate the machine shop at Kinner's in Plant 1 on any shift without operating the tool room at the same time? [367]

The Witness: It is possible to operate the machine shop without the tool room. But there has to be some machine repair and tool work done somewhere, and they surely wouldn't do it in the production end of the shop, when there was a tool [368] room available. I think it is very necessary to have a tool room on the job to keep production going in war time.

(Testimony of James Macon Davis.)

Q. (By Mr. Esterman): Now, on a milling operation there is usually involved, is there not, a cutter of some kind that is made of special steel, special hardened steel; isn't that correct?

A. Yes, sir.

Q. Those cutters sometimes during the course of production will break, will they not, points come off?

A. Yes.

Q. Has that happened in your experience?

A. Yes; many times.

Q. Did your duties on those occasions include either the repair or tooling of new cutters?

A. Yes, sir.

Q. When you say many times, can you indicate how often that did happen while you were with the company, on your shift, I mean?

A. Cutter breaking on milling?

Q. Yes. [369]

A. I would say the period I was in the tool room it happened hundreds of times.

Q. Did it happen at least once a day?

A. Usually once or more times a day.

Q. When I say "day" I mean on your shift. Have you finished?

A. No.

Q. Go ahead.

A. The most of the companies have very few cutters, due to the shortage of material. [370]

Q. (By Mr. Esterman): During the time you were with the company is it your experience these cutters were repaired or sharpened—if I use the

(Testimony of James Macon Davis.)

correct term—by anyone not connected with the tool room work?

A. No special cutter. Grinding was done by any of the machine operators in the production.

Q. Who would usually do the cutter grinding?

A. Either Mr. Swope or Gilpin or myself. I did most of it.

Q. You did most of it?

A. I did most of the grinding. [371]

JAMES MACON DAVIS,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Trial Examiner Spencer: You understand you are still testifying under oath?

The Witness: Yes, sir.

Mr. Esterman: I wonder if the company will stipulate that the personnel file so used by the company shows, with respect to James M. Davis, that a form entitled "Change of Status Notice," in that file, bearing the date November 29, 1943, and indicating a change of status with the effective date December 1, 1943, and indicating that the reason for the change is "Merit increase for superior quality work" and shows a wage increase from a basic rate of \$1.15 per hour to \$1.20 per hour in

(Testimony of James Macon Davis.)

each case, subject to the additional 5-cent night bonus.

Mr. Collins: Yes, I will so stipulate.

Mr. Esterman: Thank you.

Q. (By Mr. Esterman): What was your starting wage rate when you came with Kinner Motors?

A. It was either 60 or 65 cents. [375]

Q. Your change then from 60 or 65 cents, whatever it was, to your final rate—what was your final rate?

A. The final rate was \$1.20, plus five.

Q. That total change was the result, was it not, of periodic increases of small amounts, rather than one change?

A. Yes. They all came five cent raises, except one time I had a 10-cent raise one time.

Q. There has been something said on this record about blood donations. Were the employees of the company ever solicited for blood donations for the Red Cross while you were there?

A. Yes.

Q. On what occasion?

A. That was about May they solicited, and the donations were given on June 10, 1943.

Q. Were you one of the donors?

A. I was.

Q. Did you go down to the Red Cross from the plant?

A. I went to the Red Cross from the plant on company time.

Q. With the company's approval?

A. Yes.

(Testimony of James Macon Davis.)

Q. Was anyone with you?

A. Mr. Johnson, Brian C. Johnson, Mr. Ronnie Linkogle and there were three or four more. I don't remember their names. [376]

Q. All employees of the company?

A. All employees of the company.

Q. Since that time was there any request made by or through the company——

A. Not to me.

Q. ——for blood donations? A. No.

Q. Also, something was said on the record about authorization cards. I think your testimony was you passed out some cards to the employees of the plant.

Mr. Collins: I object to that as having been asked and answered.

Mr. Esterman: A preliminary question.

Trial Examiner Spencer: He has so testified.

Mr. Esterman: Yes. I am simply reminding him what he testified.

Trial Examiner Spencer: Proceed.

Q. (By Mr. Esterman): Did you deliver any signed authorization cards to the machinists union?

A. Yes.

Q. How many, and when, if you recall?

A. I gave seven, I believe, to Mr. Gabhart on or about the 10th of January, or the 12th; 10th or 12th of January, somewhere along about that date.

Q. Mr. Gabhart? [377]

A. Mr. Gabhart.

Q. Is that 1944? A. That is 1944.

(Testimony of James Macon Davis.) -

Q. Who is Mr. Gabhart? A. Beg pardon?

Q. Who is Mr. Gabhart, or was he?

A. He is the chairman for the I. A. M. in the Kinner's Plant 2.

Q. I don't believe the record shows, Mr. Davis, what the relationship is between Plant 1 and Plant 2. I mean with respect to how near or how far apart they are. What is the situation?

A. Plant 1 and Plant 2 are separated only by a narrow alley between. [378]

Q. Have you ever heard Gilpin and Swope and yourself referred to by anyone as the three musketeers? A. Yes.

Q. On what occasion and by whom, if you recall?

A. About two weeks before my termination I was going to the buffing room down the aisle of the machine shop, and I passed Mr. B. C. Johnson, and after I had gotten several [379] feet away from him I heard him say, "There goes one of the three musketeers."

Q. Did he say that to anyone there?

A. I believe it was Ronnie Linkogle; I wouldn't be positive about it.

Q. He did say it to someone?

A. Yes.

Q. To whom?

A. I believe it was Ronnie Linkogle.

Q. I also meant to ask you, Mr. Davis, with respect to your tool work, whether you were required

(Testimony of James Macon Davis.)

to work any particular tolerances; if so, what they were?

A. Yes, sir. In precision tool grinding or inspection gauge grinding we work within one-ten thousands of an inch.

Q. You say, "We." Do you mean you did?

A. Yes. And also Mr. Gilpin at times. He didn't do as much of that as I did.

Q. You say as much of that, do you mean precision grinding? Exactly what do you mean?

A. I had some inspection, precision inspection gauges to make during one period that required one-ten thousands of an inch precision.

Q. What are those gauges used for?

A. They are spherical radius gauges to inspect and gauge [380] the barrels made in Plant 2.

A. In other words, to check the quality of work on matters that have been produced on the production line? A. That is right.

Q. There has been some testimony about the War Manpower Commission hearing, which took place on or about March 3rd in Glendale. Or was it in Burbank?

A. It was in Glendale.

Q. Were you present at that hearing?

A. I was.

Q. Was there anything said by the panel chairman or any of the panel to Mr. Sullivan, in your hearing, on the subject of your discharge, with respect to whether or not you might have been put somewhere else in the plant? [381]

(Testimony of James Macon Davis.)

Q. (By Mr. Esterman): Do you recall the question, Mr. Witness?

A. No, I don't.

Mr. Esterman: Will you read it, please?

(Question read.)

The Witness: Yes.

Q. (By Mr. Esterman): What was said?

A. One of the panel asked Mr. Sullivan if he could have [382] put us on production, a production job. And Mr. Sullivan said, "Yes, I could have. But I didn't want to insult the boys by offering them a lower wage."

And he said, "Besides that, they came in after 5:30, after I had gone home and I didn't have an opportunity to say anything."

Q. Was that the extent of the interchange between the panel member and Mr. Sullivan at that time on that subject? A. Yes, sir. [383]

Q. Did the machinist union have a steward on your shift? A. Yes.

Q. Who was the steward?

A. I was the steward.

Q. Did you wear a steward's badge?

A. Yes, sir, I did.

Q. Do you have one with you?

A. No, I don't have it with me.

Q. Tell us what kind of a badge it was with respect to its size and color, if you know?

A. It is white. It is a white badge, about the size or maybe a little larger than a silver dollar, and it has the word "steward" in large letters,

(Testimony of James Macon Davis.)

block letters across the face of the badge. It has "International Association of Machinists" around the edge.

Q. Are you able to recall when you wore this badge at the plant?

A. I wore it continuously from about ten days before my termination.

Q. That is from about the 13th of February, 1944?

A. Yes, sir. [388]

Q. Were you wearing it when you were terminated?

A. Yes, sir, I was.

Trial Examiner Spencer: How many stewards were there? How many stewards did you have in the entire plant on your shift?

The Witness: On my shift I was the only one in Plant 1. They could have had some in Plant 2, but I don't know about that.

Q. During the time you wore your steward's badge, did you engage in a conversation with Mr. Cliff Malamphey on the subject of your steward's badge?

A. I did.

Q. Where did that conversation take place, if you recall?

A. In the tool room.

Q. With respect to your working hours, do you recall whether it was early in your shift or late, or when it was?

A. We were just—I had just come to work.

Q. Was Malamphey on the same shift?

A. Malamphey was on the day shift.

Q. Now, you stated that it was during the time you wore your badge. Are you able to fix the time

(Testimony of James Macon Davis.)

any better than that, with respect to when you were laid off?

A. That was about 10 days before my termination.

Q. Was anyone else present when you had this conversation, other than yourself and Mr. Malamphey? [389]

A. I remember Mr. Gilpin was there and probably some of the day crew. But I don't know exactly who was present.

Q. You can't name them now?

A. I can't name them, no.

Q. What was the conversation?

A. Mr. Malamphey looked at my badge, and says, "What you got there?"

I says, "You can read, can't you?" I held it up to him.

He says, "I thought you told me that you were against any unions when this union business first came up."

I said, "I was, but," I said, "if we went ahead and got a union, let's get a good one." And I said, "That is my choice."

He said, "I don't think much of a fellow that will say one thing and do another." That was the end of the conversation.

Q. Did you ever engage or were you ever engaged in conversation with Mr. Brian C. Johnson on the subject of Mr. Swope's work?

A. Yes, sir.

(Testimony of James Macon Davis.)

Q. Do you recall any particular instance or time when such a conversation took place?

A. I remember one, about, oh, probably six months before my termination, or around that time.

Q. Who was present at that conversation?

[390]

A. Mr. Swope and Mr. Gilpin and myself, and Mr. Johnson.

Q. Was this in Plant 1?

A. This was in Plant 1, near the tool crib.

Q. The tool crib is the same as the toolroom? Are you also referring to the toolroom when you say "tool crib"?

A. The tool crib is located practically in the center of the machine shop and supplies are issued through the tool crib, to the workers.

Q. Bearing in mind my preliminary question, as to what the subject of discussion was, will you tell us what the conversation was at that time?

A. The discussion was about different acts of production in the plant on the day shift and also on the night shift. And Mr. Johnson brought up that he remembered the time when Mr. Swope broke a production record in Plant 1 on the radial drill.

Q. Did he say what production record it was? Did he tell you what was involved in that record?

A. He said that Mr. Swope did so many of these parts and had them stacked in the aisle, finished work, he had done, you couldn't hardly get up and down the aisle.

(Testimony of James Macon Davis.)

He said, "I wonder what the day shift thought when they came on and saw that work."

Q. Did they say what parts they were?

A. Front covers, I believe. [391]

Q. Front covers for what?

A. Rear covers, it was. Rear covers it was; I am pretty sure.

Q. For airplane engines? A. Yes.

Q. Is that all you recollect of that discussion?

A. That is all I recollect of that discussion.

Mr. Esterman: No further questions.

Q. (By Trial Examiner Spencer): Mr. Davis, you have testified, I believe, to some extent as to the duties of Mr. Malamphey, Cliff Malamphey?

A. Yes.

Q. I would like a little more detail. Just what does Mr. Malamphey do?

A. Mr. Malamphey is assistant to Mr. Ross Nichols, who is foreman on the day shift.

Q. Have you had any opportunity to observe just what Malamphey does? A. Yes, sir.

Q. Describe his duties.

A. His duties are—he is acting foreman while Mr. Nichols is out of the plant or away on vacations, and so forth, and during the time Mr. Nichols is there he assists him in issuing jobs, also in making out requisitions for stock issued out of the steel room—we call it—or the the room where [392] all the material is issued.

Trial Examiner Spencer: Do you have any cross examination?

(Testimony of James Macon Davis.)

Cross Examination

Q. (By Mr. Collins): You say, Mr. Davis, that you are working now? A. Yes, sir.

Q. When did you start working presently?

A. I started, I believe, March 6th.

Q. March 10th? A. 6th.

Q. March 6th? A. Yes.

Q. Where was that?

A. Bendix Aviation Corporation.

Q. Where?

A. I believe that is 11600 Sherman Way, North Hollywood.

Q. That was March 6th. And what do you receive there? A. \$1.20 plus five.

Q. Have you received that continuously?

A. I have.

Q. Beg pardon? A. I have.

Q. How many hours have you worked a week?

A. I have worked eight hours a day. [393]

Q. You have been receiving the same pay for how many days a week?

A. For six days a week; eight-hour days.

Q. You have been receiving then the same pay per week you were receiving at Kinner's?

A. Per hour, yes, but not in time.

Q. What was the difference?

A. I worked ten hours at Kinner's; six days a week.

Q. Do you get paid at Bendix on the basis of ten hours? A. I beg your pardon.

(Testimony of James Macon Davis.)

Q. Do you get paid at Bendix on the basis of ten hours because it is a night shift?

A. No.

Q. You only get paid on the eight?

A. No. I am on the second shift, which receives a five cent bonus. The third shift receives the same. They only work six hours but they receive pay for eight hours. That is on the graveyard, they call it, or the third shift. [394]

Q. When was the first time that you knew you were laid off for the reason given by the company that there was lack of work on your shift?

A. I beg your pardon?

Trial Examiner Spencer: Read the question.

(The question was read.)

The Witness: The girl in the personnel office read from some paper on her desk I didn't see, except to know it was just a paper she was reading from. She said "This slip says 'layoff, lack of work'."

Q. Your testimony on direct examination was that no one told you at the time of the layoff you were being laid off for lack of work; is that correct? [400]

Mr. Esterman: I object. That wasn't his testimony.

Mr. Collins: The Trial Examiner remembers, and that was his testimony.

Trial Examiner Spencer: The record will show, if there is a conflict.

(Testimony of James Macon Davis.)

Q. (By Mr. Collins): Is that correct, if you so testified?

A. I testified this girl said, when we went into the personnel, "This slip says, 'layoff, lack of work.'" [401]

Q. You have heard the testimony here concerning the question of War Bonds. Did you ever participate in any conversations with any of the employees of Kinner Motors in relation to War Bonds?

A. I probably have.

Q. Who? A. Mr. Dayhoff, I believe.

Q. Who else?

A. He is the only one I know of positively.

Q. Can you remember any other people that you discussed it with?

A. I don't believe I can.

Q. You can't remember another person?

A. I can't remember anyone else positively.

Q. You had quite a few talks with quite a few people about War Bonds?

A. Maybe I did, but I don't remember them.

Q. You don't remember that matter. What do you mean, "Maybe you did"?

A. I have had a lot of talks about a lot of different things that I don't remember.

Q. I am asking you if you had a talk about a very [403] important subject to our country, about War Bonds?

Mr. Esterman: I object. The question has been asked and answered several times.

(Testimony of James Macon Davis.)

Mr. Collins: I have had the most elusive kind of answers.

Mr. Esterman: I object to that statement. I think the answers have been clear and unmistakably responsive.

Trial Examiner Spencer: I will sustain the objection. I think he has answered repeatedly. I think his answer is he may have but he doesn't recall the conversations with employees about War Bonds, except the conversation he had with Mr. Dayhoff.

Is that your testimony?

The Witness: That is right.

Q. (By Mr. Collins) What did you say to Mr. Dayhoff?

A. I remember one conversation I had with Mr. Dayhoff when I said that I didn't believe in tying up all the money that a man had in War Bonds, because they might be frozen at any time and he wouldn't have the opportunity to get necessary money in case of sickness or so forth.

Q. What else did you say?

A. I said I believed, my personal belief was we should give our money and go into total conscription.

Q. Did you say anything about you thought the Bonds might be worthless? [404]

A. Not that I recall, no, sir.

Q. Do you mean by that you can't remember whether you did or didn't or that you didn't say it?

A. I said that it was possible that the Govern-

(Testimony of James Macon Davis.)

ment debt would get so big they couldn't pay off. I didn't say they would. I said it was possible.

Q. To whom did you say that?

A. I said that to Mr. Dayhoff.

Q. How many other people?

A. Mr. Dayhoff is the only man I remember making that statement to.

Q. You say you may have had talks with other people. If you talked to other people in the plant you said about the same thing; didn't you?

A. I don't remember any talks that I had with other people.

Q. Did you ever hear Mr. Gilpin have talks with other people?

A. I heard him have a talk with Mr. Shaw and a lady with Mr. Shaw in the Bond drive.

Q. Who was the lady?

A. I don't remember the lady.

Q. All right. What did he say to them?

A. Who, Mr. Gilpin?

Q. Yes. [405]

A. Mr. Gilpin told Mr. Shaw that he didn't believe in buying Bonds for a profit when the boys were shedding blood in Europe free and giving their lives.

Q. Did he say he didn't believe it was right to buy Bonds under those circumstances?

A. He says, "I believe we should give the money to the Government. The boys are giving their lives. Why shouldn't we give our money?"

(Testimony of James Macon Davis.)

Q. Did he say he didn't believe it was right to buy Bonds under those circumstances?

A. He said that and he added because of the fact that the boys were giving their lives and we should give the money.

Q. Did he say anything about the fact that the United States has chosen this method of financing the war, and that is the only method available? Did he say how we were going to finance the war if all the people had that same feeling?

Mr. Esterman: Do you mean did Gilpin say that?

Mr. Collins: Yes.

The Witness: I don't recall a statement like that.

Q. (By Mr. Collins): Did he say something, in substance, about like that?

A. I don't remember.

Q. Did anybody say to you and Mr. Gilpin, "How are you going to finance the war if all people of your kind have views on this thing"? [406]

A. I believe Mr. Gilpin testified——

Q. We don't want his testimony now. We want what was said.

A. I don't know anything about it.

Q. Was it said?

A. I don't recall that statement. It could have been said.

Q. Did Mr. Gilpin say anything about the Bonds being worthless?

Mr. Esterman: What is the question?

Q. (By Mr. Collins) Did Mr. Gilpin say to Mr.

(Testimony of James Macon Davis.)

Shaw and this lady anything about the Bonds being worthless?

A. Did he tell Mr. Shaw that the Bonds might be worthless?

Q. Yes. A. No, sir. He did not.

Q. Did he discuss the fact they might be worthless?

A. No, sir, he did not. I related the full conversation between Mr. Gilpin and Mr. Shaw.

Q. What was that full conversation?

A. That full conversation was Mr. Shaw asked Mr. Gilpin if he wanted to buy extra War Bonds. Mr. Gilpin says, "No, I don't want any extra War Bonds."

He said, "I don't believe in buying War Bonds for a profit when the boys in Europe are shedding their blood and giving their lives free." [407]

RICHARD ARTHUR SWOPE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. (By Mr. Esterman) State your full name and address.

A. Richard Arthur Swope, 623 East Athens, Altadena. [418]

Q. Where are you employed, Mr. Swope?

(Testimony of Richard Arthur Swope.)

A. I work at the Standard Machine Works, 88 North De Lacey, Pasadena.

Q. In what capacity?

A. I am working as an all around machinist, doing work on anything they happen——

Q. I can't hear you. You will have to talk a little louder.

A. I am doing all around machine work on any machine they happen to have.

Q. On what shift?

A. Second shift; they only run two.

Q. Would that be the same as the night shift?

A. Swing shift.

Q. Starting and finishing when?

A. Starting at 4:30 and running through until 2:00 in the morning at present.

Q. You say "at present". Was it different?

A. Yes, when I went to work.

Q. When did you go to work for that company?

A. I went to work February 29th. I believe either that or I applied February 29th and went to work the following Monday.

Q. What was your wage rate? You are there now? A. Yes. [419]

Q. Have you been there continuously since that time? A. All but two weeks.

Q. What happened then?

A. My tools were stolen. The shop was broken into my tool box was stolen. I left for a couple of weeks while they were attempting to recover my

(Testimony of Richard Arthur Swope.)

tools. Then I came back and had to buy a new set of tools to resume work.

Q. When were you absent? Fix the time, if you can.

A. It was the first part of March.

Q. Except for that absence you have been there continuously? A. Yes, that is right.

Q. At what wage rate did you start?

A. \$1.15.

Q. With any night bonus?

A. The night bonus was 5 percent.

Q. Is it any different now? A. No.

Q. That is what you are getting now?

A. Yes.

Q. 5 percent night bonus?

A. 5 percent night bonus.

Q. In addition to your \$1.15?

A. Yes. At the present time I am getting my base pay which is \$1.25 plus six cents night bonus.

[420]

Q. That is the present method of payment?

A. Yes.

Q. When did that take effect, if you know?

A. I have been getting raises every four weeks. They considered my work good enough to merit a raise every four weeks after the first two weeks, which give me my first raise.

Q. What were you raised from to?

A. From \$1.25 to \$1.31.

Q. Were you raised after that from \$1.31?

(Testimony of Richard Arthur Swope.)

A. I don't exactly understand what you mean, after what?

Q. What is your present wage rate?

A. \$1.31.

Q. Was your increase from \$1.105 to \$1.31 all at one time or in stages?

A. A nickel at a time.

Q. Thank you. Does \$1.31 include the 6 cents——

A. It does.

Q. Thank you.

A. The base pay being \$1.25. After \$1.20 it becomes 6 cents until it reaches \$1.35 at which time it becomes 7 cents.

Q. You are saying the bonus for night work is 7 cents when your base rate is higher?

A. Yes. The higher it goes the more night bonus you [421] receive.

Q. Thank you. Now, you started to work for Kinmer when?

A. June 28, 1940.

Q. Did you work for the company continuously until February 19, 1944?

A. I did.

Q. Except for a vacation, I take it.

A. Except for one week vacation once a year.

Q. You didn't work for anyone else during that period?

A. No, I didn't.

Q. What was your next previous employment prior to June 28, 1940?

A. I worked for David Barnes. That was intermittent work in a mining district in Northern California; the repair and maintenance of mining machinery, including welding and mechanical work.

(Testimony of Richard Arthur Swope.)

Q. For how long did you work for Barnes?

A. I lived in that country for approximately 10 months, and off and on during that time, whenever it was required, I worked on his machinery. That was not continuous because due to weather conditions the mine was not run—it was a more or less of a prospect project. [422]

The Witness: That was kind of a prospect project. They were drilling. They were using a diamond point drill to take test cores out of the ground.

[423]

Q. Thank you. What was your wage rate when you started with Kinner? A. 50 cents.

Q. An hour? A. Yes; that is right.

Q. What was it when you left?

A. \$1.00; 95 plus five cents night bonus.

Q. Would you tell us, with respect to the time you worked at Kinner's, what you did when you started, what progressive changes were made in your work with respect, not only to the work but your shift. Simply give us the facts, the dates and the changes in jobs, as briefly as you can?

A. As far as giving the dates and the changes in jobs, the jobs ran in such a way it would be impossible to do that because one night we might be working on one thing, the next night we might come in and work on three or four things in a night. I started out on a drill press, single spindle [425] upright drill press, drilling and reaming valve guide holes in cylinder heads. From there I went to va-

(Testimony of Richard Arthur Swope.)

rious drilling operations on other parts, including cylinder barrels and cylinder heads. And then I did various operations on milling machines. Then I worked on the Sted threading machine for something like five months. During that time, when the job on the machine would run slack, I did milling machine work. Then I went on the radial drill and I worked quite some time. I don't know exactly how long. It was well over a year. That was on the radial drill, doing all operations except the boring machine operation and some milling machine operations on the rear covers. Some of the operations ran into as many as fifty different complete changes in tools on each part. I worked on that up until the time I went in the toolroom.

Q. When did you go into the tool room, Mr. Swope?

A. I think it was in August, 1943.

Q. There you remained until you were laid off in February, 1944?

A. I remained there until I was laid off in 1944, February 15th was my last working day.

Q. Have you operated both vertical and horizontal milling machines at Kinner's?

A. Yes, I have.

Q. Have you operated grinders? [426]

A. Grinders, both internal—I mean not internal. I don't mean that. I didn't operate the internal. I operated the combination, internal and external Cincinnati, Philamatic on external work only. Also the Cincinnati tool grinders and another tool grind-

(Testimony of Richard Arthur Swope.)

er, I don't know what the name was. I never paid any attention.

Q. Did you work on the shaper at Kinner's?

A. I worked on the shaper, both shapers they had there at the time, the Cincinnati and the G. and E.

Q. There was a machine mentioned called a lateral, I think. Have you worked on that machine?

A. That is right. That is a Sunnen bushing lapper.

Q. What is the operation, just briefly?

A. It is to lap micrometrically the internal dimension of any bushing, as close as to one-ten thousandths of an inch.

Q. I don't know whether I know any more now about it than I did.

Have you done any work on a threader?

A. That is right.

Q. Is that a machine?

A. That is a stud threader for automatically putting the threads on the studs to a definite length of thread. It was a Landis machine.

Q. Have you worked on lathes at Kinner's?

A. Both bench lathe and engine lathe. [427]

Q. Your answer is you have? A. Yes.

Q. Did Kinner's, while you were there, have any power driven metal saws?

A. They had one in Plant 2. I had occasion to use it.

Q. You worked on it? A. Yes.

(Testimony of Richard Arthur Swope.)

Q. Did you do any welding when you were with the company? A. I did. [428]

Q. Will you relate the circumstances under which your change of status into the toolroom came about? And by that I mean who was responsible for it, if you know, or who told you you were being transferred? Do you understand that?

A. Yes. I came in early, about 11:00 o'clock in the morning, if I remember right, and went over to the personnel to see Mr. Sullivan about a part time availability to go to work four hours a day somewhere else, at which time I asked him why I wasn't getting more money in proportion to the work I was doing.

He said I had reached the top on my classification of work. So I told him at that time I wanted my release or another job where I could make more money. He said that he would contact Mr. Davey and see what he could do. That evening when I came in I was told to go to Mr. Davey's office. I went there and his secretary—I didn't see Mr. Davey personally—his secretary told me to report to Clifford Malamphey who, at the time, was taking Ross Nichols' place, who was on vacation. On reporting to him I was told [433] what job I was to do and the machine I was to operate, which was an engine lathe, a Monarch, and given the work and told to go ahead and do it.

Q. Was Gilpin working in the toolroom on that shift when you went into the toolroom?

A. He was.

(Testimony of Richard Arthur Swope.)

Q. Was Jim Davis working in the toolroom at that time? A. That is right.

Q. Calling your attention to the evening of February 16, 1944, did you go to work as usual on that night? A. Yes, I did. I came——

Q. Just answer the question. What, if anything, occurred?

A. You mean from the time I arrived at the plant?

Q. Yes.

A. The first thing I did I went in, naturally, and punched my card, which was in the rack. I went on into the shop and talked to the lathe operator on the shift, the day shift, and he was explaining what was left on the job that we were doing. Then I was approached by Ross Nichols.

Q. All right. Mr. Nichols said something to you?

A. Yes. He stood until we were finished talking, and then, as I walked away from Mr. Calhoun, who is the engine lathe operator in the toolroom for the day shift, he stopped me and told me that there was no further work and I should get my checks and get a tool release. [434]

Q. Nichols told you that?

A. That is right. So I went and got my checks out of my tool box and we went together to the tool crib where Mr. Harry Payne authorized the tool release for me. He was the tool crib man.

Q. What was said between you, if anything, and

(Testimony of Richard Arthur Swope.)

Mr. Nichols at that time with respect to your being laid off?

A. At that time nothing was said. He left and I went ahead and got my tools together and rolled them out to the front gate where they could be picked up.

Q. Did you ask him why you were being laid off?

A. I didn't ask him that until later.

Q. How much later?

A. I should say about an hour and a half later, between an hour and an hour and a half. I was waiting in the clock room to get through, a call through to my wife to bring the car down so I could pick my tools up.

Q. Did he give you any reason for the layoff?

A. I asked him why, in such a case, he must have known there was a shortage of work that he did not give me at least a couple of day's advance notice that I was being laid off, so I wouldn't have caused the inconvenience it did as I *to* wait at the plant from the time the shift changed until well after dark for my wife to come down to get the car, which was something like 12 to 14 mile drive for her. [435]

Q. What did he say?

A. Well, he said, "One never knows. Things are changing rapidly and one never knows what happens from one day to the next."

Q. Is that all he said that you remember?

A. That is all he said.

(Testimony of Richard Arthur Swope.)

Q. He didn't say anything else at that time?

A. No. He wouldn't say anything else.

Q. Now, did you go back for your check?

A. I had no idea when I would be able to get it, other than the regular pay day, because previous to that other employees——

Q. Did you go back on the regular pay day?

A. Yes.

Q. When was the next pay day?

A. It would come on Sunday, so it was set ahead to Saturday which was the 19th. The reason I didn't go back before that was because other employees had been told to come on the regular pay day for their final checks.

Q. You went back for your pay check. Did you go to the personnel office? A. Yes, I did.

Q. Whom did you see there?

A. I saw and talked to the girl that issues the temporary passes. She was the one that gave me my check. The entire stuff that was handed to me, you know, availability certificate [436] and termination notice and all the stuff was pinned together; that came with the check.

(The documents referred to were marked as Board's Exhibit No. 12 for identification and received in evidence.)

(Testimony of Richard Arthur Swope.)

BOARD'S EXHIBIT No. 12

Deliver This Copy to the Worker at the
Time His Services Are Terminated

Use This Form Only for Reporting Termination
of Service Involving Possible Disqualification
Social Security account number of worker 548-
26-6968

Name of worker: Richard A. Swope.

Date of this notice 2-17-44

Last date individual worked 2-16-44

Date employer was informed of workers termina-
tion of service if other than date entered in the
preceding item.....

Employer's name and address must be typewritten
or entered in ink

Kinner Motors, Inc.

635 W. Colorado Blvd.

Glendale 4, California

Do Not Ask the Worker to Sign This Form
Instructions for the Worker Appear on the Reverse

Termination Notice Concerning

Possible Disqualification

Cause of Termination of Service

Check item 1, 2, 3 or 4, or state the cause of sepa-
ration under item 5. Present full explanation under
item 6:

1 () Left voluntarily

2 () Discharged for misconduct connected
with his work

3 () Worker not able to work

(Testimony of Richard Arthur Swope.)

4 () Worker not available for work

5 () Other cause Laid off—Termination of Contract.

6 () Explanation

I Certify That the information given on this form is true and correct to the best of my knowledge and belief.

By

E. J. SULLIVAN M

Signature of individual completing this notice

California Department of Employment Affiliated with Social Security Board

Instructions to Worker for Use of Termination Notice Concerning Possible Disqualification

As soon as possible, take this notice to the local employment office in the vicinity in which you live. If there is no United States Employment Service office in your town write the nearest office, asking when and where you can consult a representative of the Department of Employment. It is important that you do this immediately, regardless of possible disqualification.

Do Not Destroy This Notice. Your employer is required to give it to you under the Regulations of the California Employment Commission.

If you file a claim for unemployment insurance or if you renew or continue a claim which was previously filed, Present This Notice at the time of registration for work and filing of a claim.

You will be ineligible for unemployment insur-

(Testimony of Richard Arthur Swope.)

ance if the California Department of Employment determines that:

1. You quit your job without good cause (2 weeks ineligibility), or

2. You were discharged for misconduct connected with your most recent work without good cause (1-6 weeks ineligibility), or

3. You wilfully made a false statement or representation or wilfully failed to report a material fact to obtain unemployment insurance (4 weeks ineligibility).

You can not collect unemployment insurance when you are sick and unable to work.

If, without good cause, you refuse suitable employment when offered to you, or fail to apply for suitable employment when notified by the United States Employment Service office, you will be ineligible for unemployment insurance.

Failure to present this notice when filing a claim for unemployment insurance may result in a serious delay in the determination of your insurance rights.

Warning: It is not necessary to employ anyone to help you collect benefits; someone in the local employment office will help you.

Q. Now, when you went back for your check to the personnel office, was Mr. Sullivan there?

A. Mr. Sullivan was in the main lobby of the personnel office. I stood within five feet of him.

(Testimony of Richard Arthur Swope.)

Q. Did he speak to you?

A. No, he did not speak. He turned his back. He looked [438] at me and turned around to the girl that was getting something from the files for him.

Q. You heard the testimony concerning a hearing before the War Manpower Commission on or about March 3rd; did you not?

A. That is right.

Q. Were you present at that hearing?

A. I was.

Q. Did you hear a conversation between Mr. Sullivan and one of the panel members with respect to whether or not you or Gilpin or Davis had been offered or could be offered work in the plant?

A. I did.

Q. Did you hear that conversation?

A. Yes.

Q. Relate it as well as you can remember it?

A. He asked——

Q. Who?

A. The panel chairman asked Mr. Sullivan at the time why we had not been offered other positions. Mr. Sullivan said apparently we avoided seeing him at the time that we left, for some reason that he didn't know.

Q. Just tell us what he said.

A. So he couldn't——

Q. Tell us what he said.

A. So he couldn't offer us the other position. And that was [439] about all I remember of that conversation.

(Testimony of Richard Arthur Swope.)

Q. Thank you. Calling your attention to the prior case in which there was a hearing in December, 1943, did you aid or assist in the obtaining of any information in connection with the presentation of that case?

A. Anything I could find in the form of bulletins that were posted or any material in the Kinner Log, which was the Kinner newspaper, or anything I could present to Mr. Davis of any value to him I did at the time, in the way of not taking the bulletins but just copying the material.

Q. Do you know whether any foreman or representative of management knew that you were active in the manner in which you have just described?

A. I am sure Mr. Johnson did. [440]

Q. You have mentioned Mr. Nichols. Were you and Mr. Nichols pretty friendly before the hearing in December?

A. We got along just fine. I should say I never had any words with him or anything to indicate that we were not friendly.

Q. Did you notice any change in his attitude after the hearing? Just answer yes or no.

A. I would say yes.

Q. Would you explain your answer?

A. We used to always discuss the work thoroughly before we went into it. He usually called us over to his desk and discussed it so there would be no slip-ups in the job. After that his orders were quite short and no personal conversations were had with him after that; and fault was found

(Testimony of Richard Arthur Swope.)

with the work in one or two cases. And just a general change in [444] attitude was noticeable at the time. [445]

Q. There has been some testimony about conversations which took place, testimony by Mr. Davis, about a conversation that took place he said about six months before Davis was terminated, in which there was a discussion with Mr. Johnson on the subject of your work. You heard that testimony; didn't you? A. Yes.

Q. Do you recall that conversation?

A. Yes. Do you want to know what the job was about?

Q. Wait until I ask the questions. Do you recall the conversation? A. Yes, I do.

Q. Were you present? A. Yes.

Q. Who was present, according to your recollection?

A. Mr. Gilpin, Mr. Davis and myself, and Mr. Johnson.

Q. Where did that discussion take place?

A. Somewhere near the window, I would say, where the tools were issued from the tool crib. That would be right in front of the Norton grinder that sits there.

Q. In Plant 1? A. In Plant 1.

Q. On the night shift?

A. On the night shift.

Q. What was said in that conversation on the subject of your work?

A. There was the subject of promotion brought

(Testimony of Richard Arthur Swope.)

up, and Johnson mentioned the night that I turned out the rear covers on this operation, this particular operation. Previous to the time I went on the job a 10-hour night was a [449] good night when they turned seven out.

Q. Are you telling us what Johnson said?

A. I am telling us what occurred, what caused Johnson to say that.

Mr. Collins: I move to strike it. Let's try to keep to the question.

Mr. Esterman: I am trying to do the same thing.

Mr. Collins: I know you are.

Q. (By Mr. Esterman): Tell us what was said at that time. If I want to know anything else, Mr. Swope, I will ask you.

A. He said that the aisle was blocked with work the next day when the day shift came on, and that the day man, of course, was surprised to see that amount of work turned out.

Trial Examiner Spencer: Turned out by whom?

The Witness: By myself.

Q. (By Mr. Esterman): Now, what particular job was he talking about, did you know at the time?

A. Yes, I did.

Q. What part or parts did the job involve?

A. It involved the drilling and reaming of cam and mag boss holes in rear covers, something like 50 or so operations on the job on each part.

Q. Does your recollection serve you as to how

(Testimony of Richard Arthur Swope.)

many you turned out on the particular night Johnson was talking about? A. I did. [540]

Q. How many did you turn out?

A. I turned 20 out that night.

Q. In your experience, what was the most that had been turned out before that by anyone else?

A. A good 10-hour night's work, if you didn't have any trouble, was seven.

Q. (By Mr. Esterman): Did you ever give the Machinists Union a bargaining authorization?

A. I think I gave them at least two.

Q. Indicate when, if you can?

A. One was back about July of 1943. The last one, I am pretty sure, was on the 11th of February, I believe, of 1944.

Q. Did you wear any union buttons on the job when you were [451] with Kinner's?

A. Yes, I did.

Q. When, if you recall?

A. I most generally always had the button on when I came in to work, quite often I had one on my shirt I wore while working. I always wore it on the top of these (indicating) either one of these two pockets on this very shirt when I came in. It was commented on.

Q. Well, first, tell me when you started wearing the button, approximately?

A. I would say in December some time, in 1943.

Q. What did you mean by your statemnt "It was commented on"?

A. Mr. Alf Graflex—

(Testimony of Richard Arthur Swope.)

Q. Mr. Graflex said something about it?

A. Yes.

Q. Who he is?

A. He is an engine lathe operator in the tool room.

Q. Was anyone else present when he said it?

A. Yes. [452]

Q. (By Mr. Esterman): Did you ever make any statements in the plant at Kinner's on the subject of war bonds to other employees?

A. Only when I was asked about what I thought of them, or approached.

Q. Were you asked? A. Yes, I was.

Q. By anyone whose name or identity you can give us? A. Mr. Dayhoff had mentioned——

Q. Just a moment. Wait until I ask the question. It will be helpful.

A. I was doing that. I just said Mr. Dayhoff had mentioned the subject.

Q. Thank you. I was about to ask you if you recall when your statement to Dayhoff was made, approximately?

A. I would say some time in January, 1944.

[454]

Trial Examiner Spencer: Who spoke first about war bonds, you or Dayhoff?

The Witness: Dayhoff.

Trial Examiner Spencer: What did he say?

The Witness: I don't remember what he said exactly. I know what I said, naturally.

Trial Examiner Spencer: What did you say?

(Testimony of Richard Arthur Swope.)

The Witness: I told him that—asked him how long he thought it would take us to make up the amount of money that was released for this certain thing that I have been told not to mention here.

Q. (By Mr. Esterman): I didn't say you shouldn't mention [455] it. I want you to tell it. If you mentioned it in your statement to Mr. Dayhoff, mention it now, because you are relating the conversation. If you mentioned a newspaper to him, you can certainly mention it. We want you to tell us what you said and what he said.

A. About this piece in the paper, about the three and a half million dollars being allowed to the Treasury Department for advertising on war bonds, I asked him how long he thought it would take us at Kinner's to make that amount up, that was spent not in furthering the war effort in the way of buying materials to help the boys that were fighting, and asked him at the time if he didn't think it would be more practical to forget about the advertising since they were taking the money out of our check, let them take the money and spend a hundred per cent of it on the purchase of war materials, and forget about the three and a half million dollars for advertising.

Q. Are you referring to something you saw in a newspaper? A. That is right.

Q. Have you given us the substance of what you saw in the newspaper?

(Testimony of Richard Arthur Swope.)

A. Yes. What I saw was the release of three and a half million dollars for advertising.

Q. Did he say anything?

A. He didn't have anything to say about that.

Q. Do you know how that conversation started?

A. No, I don't exactly.

Trial Examiner Spencer: Is that all you said about war bonds during that conversation?

The Witness: That is all.

Q. (By Mr. Esterman): Do you recall the identification or names of any other persons with whom you discussed war bonds at Kinner's?

A. No, I don't.

Q. Did you talk with persons about war bonds whose names you don't remember?

A. Only, naturally, Mr. Davis and Mr. Gilpin.

Q. You discussed war bonds with them?

A. They are the same identical things I told you in my statement here.

Q. You discussed this same subject with Gilpin and Jim Davis? A. That is right.

Q. Because you had seen it in the paper that day? A. That is right, yes.

Q. Did you ever tell anybody it was a waste to buy war bonds?

A. Absolutely not. I was buying them myself.

Q. All right. Did you participate in a payroll deduction plan for the purchase of bonds?

[457] A. I did.

Q. To what extent if you know?

A. I was getting a bond every time they came

(Testimony of Richard Arthur Swope.)

around with them, which was once a month. I believe on the 20th of each month they brought them out.

Q. What denomination? A. \$25.00. [458]

THEO SINES

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. You have seen quite a few people wearing buttons, Machinists buttons there, haven't you, in the plant? A. Yes, I have.

Q. You have never heard anybody tell them to take them off? A. No.

Q. You are still employed there?

A. Yes, that is right.

Q. They are still working there in large numbers; are they not? A. Yes.

Q. Have you ever heard anybody from management tell them to take off the union buttons?

A. No. [475]

(The documents referred to were marked as Board's Exhibits No. 13 and 8 for identification and received in evidence.)

(Testimony of Theo Sines.)

BOARD'S EXHIBIT No. 13

KINNER MOTORS INC.

KINNER

635 West Colorado Boulevard

Glendale, California, U. S. A.

Please Address All Correspondence to Kinner

Motors Inc and Reply in Duplicate

Telephones Los Angeles Chapman 5-1021

Glendale Citrus 3-3141

Cable Address Kinco

Bell System

Teletype Writer Service

Glendale 7078

February 22, 1944

Mr. John Eaton

635 West Colorado Blvd.,

Glendale 4, California

Dear Sir:

Kinner Motors, Inc. regrets exceedingly that it has now become necessary to terminate your employment with the Company, for the reason that your physical qualifications do not reach the standard which the Company must now maintain on its guard forces. I am sure that you realize for a long time past the Company has attempted to avoid this, but regrets it cannot do so any longer.

We are, therefore, notifying you officially that

(Testimony of Theo Sines.)

your employment will terminate as of the last day of February 1944.

Yours very truly,

KINNER MOTORS, INC.

E. J. SULLIVAN

E. J. Sullivan

Personnel Manager

EJS:eas

BOARD'S EXHIBIT No. 8

United States of America

Before the National Labor Relations Board

Trial Examining Division

Washington, D. C.

In the Matter of

KINNER MOTORS, INC.

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE No. 94, for
and on behalf of LODGE No. 311, AFL

Mr. Daniel J. Harrington, for the Board.

Mr. Victor Ford Collins and Mr. James S. Wolla-
cott, both of Los Angeles, Calif., for the respondent.

Messrs. Pearson & Proctor, by Mr. Marlan
Proctor, of Burbank, Calif., for the Association.

Mr. Roscoe Ickes, of Los Angeles, Calif., for
the Union.

Board's Exhibit No. 8—(Continued)

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge duly filed on May 15, 1943, by International Association of Machinists, District Lodge No. 94, for and on behalf of Lodge No. 311, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the twenty-first Region (Los Angeles, California), issued its complaint on November 26, 1943, against Kinner Motors, Inc., Glendale, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the charge, with notice of hearing thereon, were duly served upon the respondent, the Union, and upon Kinner Motors Employees Association, Inc., the labor organization alleged in the complaint to be company-dominated, and herein called the Association.

With respect to the unfair labor practices, the complaint alleged, in substance, that from about February 1942, to the date of the issuance of the complaint herein, the respondent has expressed to the employees its opposition to any labor organization except an employer-dominated organization; that on or about March 15, 1943, the respondent inaugurated, sponsored, promoted, and formed the

Board's Exhibit No. 8—(Continued)

Association among its employees and at all times since that date has: 1) dominated, and interfered with the administration of the Association; (2) contributed financial and other support to it; (3) solicited and advised its employees to join it; and (4) attempted by means of threats to persuade its employees to become members thereof; and that on or about June 16, 1943, the respondent entered into a written collective bargaining agreement with the Association as the exclusive representative of the employees which agreement was in full force and effect at the time of the issuance of the complaint herein.

On or about December 6, 1943, the respondent filed an answer admitting all the allegations of the complaint pertaining to the existence of the respondent and the nature, character, and extent of the business transacted by it, as well as the allegations that the Union and the Association are labor organizations within the meaning of the Act and that it did, on or about June 16, 1943, enter into a written collective bargaining agreement with the Association as the exclusive representative of its employees. The answer denied, however, all the allegations of the complaint with reference to the engagement by the respondent in any unfair labor practices.

Pursuant to notice, a hearing was held on December 13, 15, 16 and 17, 1943, at Los Angeles, California, before Howard Myers, the undersigned Trial Examiner, duly designated by the Chief Trial

Board's Exhibit No. 8—(Continued)

Examiner. At the opening of the hearing, the Association moved to intervene. The motion was granted without objection. Thereafter the Association filed an answer denying, among others, the allegations of the complaint that the respondent inaugurated, sponsored, promoted, and formed the Association; dominated and interfered with its administration; or gave it financial or other support. The Board, the respondent, and the Association were represented by counsel. The Union appeared by one of its official representatives. All parties participated in the hearing where full opportunity was afforded them to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the commencement of the hearing, counsel for the respondent moved, in which motion counsel for the Association joined, to dismiss the proceeding on the ground the proceeding was barred by the rider attached to the Federal Security Appropriation Act of 1944, Chapter 221, Public Law 135, 78th Congress.¹ The motion was denied. This motion was again renewed, and each time joined in by counsel for the Association, at the conclusion of the Board's case and at the end of the hearing. The motions were again denied. At the conclusion of the taking of all testimony, the motion of Board's counsel to conform the pleadings to the proof was granted over the objections of the respondent's counsel and the Association's coun-

¹The rider is commonly referred to as the "rider to 1944 Appropriation Act."

Board's Exhibit No. 8—(Continued)

sel. The motion was made applicable only as to the correction of dates, names, and other minor recitals. Motions by the respondent's counsel and by the Association's counsel to dismiss the entire proceeding for failure of proof were taken under consideration and are now denied. Oral argument, in which counsel for the Board, for the respondent, and for the Association participated, was heard at the conclusion of the taking of the evidence and is a part of the record. The parties were granted leave to file briefs with the undersigned on or before December 22, 1943. A brief has been received from the respondent's counsel.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Kinner Motors, Inc., a California corporation, owns and operates two plants at Glendale, California, where it is engaged in the manufacture of aircraft engine parts and the assembly of aircraft engines. From January 1, 1943, to November 3, 1943, the respondent purchased raw materials amounting to approximately \$6,162,648 in value. Of this total, materials valued at about \$2,930,169 were transported to its plant from points outside California. During the same period the respondent sold products amounting to \$3,054,314 in value, of which

Board's Exhibit No. 8—(Continued)

amount sales approximating \$458,157 in value were made for delivery outside California.

The respondent conceded that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists Lodge No. 311 is a labor organization affiliated with the American Federation of Labor and admits to membership employees of the respondent.²

Kinner Motors Employees Association, Inc., is an unaffiliated labor organization admitting to membership only employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. The respondent's interference with an domination of the formation of the Association.

In the early part of March 1943, the Union started to organize the respondent's employees. Soon after the Union organizing campaign began, R. W. Walker, who had charge of the night shift once each week, obtained permission from Foreman B. C. Johnson to ask the "boys" about forming an inside organization.³ During a lunch period Walker

²The instant proceeding was instituted by Lodge 94 for and on behalf of Lodge 311.

³At the hearing, Foreman Johnson denied that Walker acted in his stead during the one night each week when he was off duty. When confronted with an affidavit previously signed by himself, however, he finally admitted that, although without the

Board's Exhibit No. 8—(Continued)

called together all of the employees on his shift and, in Johnson's presence,⁴ told them, according to his own admission, that "the A. F. of L. was handbilling us at the gate," and "that we were going to have some sort of an organization pretty soon, and I thought it would be a good idea if we had one of our own."

Shortly after Walker's speech,⁵ Leadman John Williams, father of Chief Inspector George Williams, consulted with Leadman Orville Gilbert and Howard Sharrar concerning the organization of an inside union. John Williams conferred with Attorney Marlan Proctor. Acting upon Proctor's advice, John Williams, Gilbert, and Sharrar signed articles on March 22 incorporating the Association.

The three leadmen then had cards printed bearing the following text:

title of foreman. Walker was "top man" during his absence. Walker's testimony is uncontradicted that during the period in question Johnson was absent one day each week, and that on these occasions he was in charge.

⁴Johnson was not questioned about giving Walker permission. He admitted that the speech was made and that he was present, but stated that when Walker started "some sort of gabble" he went down to the end of the shop, began to operate a noisy machine and did not hear what was said. Whether he heard Walker's speech or not is immaterial, since it is undisputed that after being informed of the nature of the speech he authorized its delivery.

⁵Walker testified that he delivered his speech two or three weeks before the Association was "heard of."

Board's Exhibit No. 8—(Continued)

I, the undersigned, hereby designate and appoint Kinner Motors Employees' Association, Inc., as my exclusive bargaining agent under and by virtue of the terms of the National Labor Relations Act.

Williams distributed these cards among other leadmen who, in turn, solicited the signatures of employees throughout the plant during working hours.⁶ Foreman Johnson and W. J. Kroening, a supervisory employee⁷ also distributed these cards

⁶This finding is based upon the credible testimony of Leadmen Orrill and Gardiner.

⁷The confused state of the record does not permit a finding as to Kroening's exact classification. According to information read into evidence by Personnel Manager Sullivan, from purported company records, Kroening was hired in 1941 as a test mechanic, was reclassified to sub-foreman in July 1942, reclassified to test operator in January 1943, and reclassified to leadman in August, 1943. Sullivan also testified, however, that classifications had been listed correctly in a document which he prepared in September 1943, and this document, in evidence, lists Kroening as a foreman. Kroening testified that while he had been hired as a test mechanic, he had always performed the same duties, and that in August 1943, when obtaining information for the Draft Board, he was told by Test Superintendent Gerber that he was a foreman. The evidence is clear that at the time of his activity on behalf of the Association Kroening had supervisory powers, whatever his title or classification. Personnel records show that from March until August 1943, he had charge of a test crew. Kroening stated that he had up to 10 men under his supervision, that he checked their work, instructed new em-

Board's Exhibit No. 8—(Continued)

and urged employees to join the Association.⁸ Foreman Earl H. Friar told employees during smoking periods at the plant that he favored the association, and paid initiation fees into the organization.⁹

The first general meeting of the Association was held April 16, at a public hall. At the request of John Williams and Sharrar, Receiving Clerk R. L. Stevens acted as temporary chairman. At the second meeting held on April 23, Stevens was elected president, and he continued in this office until about

employees, and that several employees whom he recommended for wage increases received them. The undersigned finds that his position and duties were such that employees reasonably considered his Association activities as having the approval and support of management.

⁸Kroening admitted engaging in this conduct. Johnson denied having either passed out cards or advising employees to join. The undersigned does not accept his denial as true. The finding rests upon the credible testimony of employee J. M. Davis, who testified that Johnson distributed cards among the employees, saying, "Boys, we've got some thing here." Davis named two other employees who were present at the time. Neither was called as a witness by the respondent.

⁹At the hearing Friar denied that he was or is a foreman. He admitted, however, that he assists Chief Inspector Williams, assigns jobs to and "looks after" eight employees, assumes responsibilities for the department when Williams is away, and recommends pay increases for the men in the department. Furthermore, Friar is classified as a foreman on a list of employees prepared by Personnel Director Sullivan in September 1943, and verified by him at the hearing.

Board's Exhibit No. 8—(Continued)

a month before the hearing. Although promoted on May 1, being placed in charge of the receiving department, with supervision over three other clerks and a mover, Stevens remained in office as head of the Association. Christine Jagoe, secretary to Personnel Manager Sullivan, acted as secretary at the first Association meeting. Thereafter Rose Minor became secretary of the organization. Miss Minor is also employed in the personnel office, in charge of employee insurance and personnel records.

B. The respondent's domination of and interference with administration of the Association

On May 1, Proctor wrote to the respondent, asking that the Association be recognized as the exclusive collective bargaining agent of the employees, and accompanying the request with a number of signed cards, the text of which has been noted above. On May 7, President Herring of the respondent wrote to the Association, stating that the cards had been checked, that the respondent would grant the request for recognition, and that it "would be pleased" to discuss "any matters" with it.

On June 16, the respondent and the Association entered into a collective bargaining agreement for 1 year, by terms of which the respondent recognized the Association as the exclusive bargaining agent for all the employees except certain exclusions. The contract covered wages and working conditions. The respondent, at its own expense,

Board's Exhibit No. 8—(Continued)

thereafter had copies of the contract printed. Within its covers were bound detachable cards, one an application for membership in the Association, and the other authorizing the respondent to make certain deductions monthly and to pay the deductions to the Association. Copies of the contract were distributed to all employees, and thereafter were given to each new employee at the time of hiring, by the personnel office.

In July the respondent permitted the following notice to be placed on the plant bulletin boards:

NOTICE TO NIGHT SHIFT EMPLOYEES

Please be advised that commencing immediately a bonus for night shift employees of five cents an hour will be paid by Kinner Motor Company, Inc., in accordance with the terms of the contract recently executed by and between Kinner Motor Company, Inc., and Kinner Motors Employees Association, Inc.

Please be further advised that this bonus has been approved by the War Labor Board.

**KINNER MOTORS EMPLOYEES
ASSOCIATION, INC.**

By **ROBT. L. STEVENS,**
President

The contract contains no such provision as that referred to in the notice.

During the summer an election was conducted among the employees of the night shift, during

Board's Exhibit No. 8—(Continued)

working hours and with the knowledge of Foreman Johnson,¹⁰ to select a steward to attend Association meetings, Leadman Cadaret was elected. He thereafter attended Association meetings, which were held during his working hours, without punching out his time cards. There is no evidence that any deduction was ever made for time thus lost from his work. Cadaret testified that he did not ask to be "excused" for such absences. Under the circumstances it is reasonable to infer, and the undersigned finds, that Cadaret was permitted by the respondent to leave his work, without pay deduction, to attend Association meetings.

In September President Stevens of the Association and employee Colburn consulted Chief Inspector Williams and obtained his permission to have Colburn serve as secretary-treasurer of the Association.

In November Sullivan assembled all employees during working hours, on both the day and the night shift, and delivered extemporaneous speeches. Among other things, he urged employees to submit their grievances through the Association and advised them to consult with either their "superiors" or with the Association "officials" in obtaining "official" answers or opinions relating to grievances. At the night shift meeting he also told employees that while he had no right to solicit

¹⁰This finding is based upon Johnson's admission at the hearing.

Board's Exhibit No. 8—(Continued)

their membership in the Association, it had been organized for them and he thought it best for them to join.¹¹

C. CONCLUSIONS

Upon the entire record, the undersigned is convinced and finds that the Association is the creature of the respondent and was brought into existence and utilized by the respondent to defeat and forestall the organizational efforts of the Union. The contention of the respondent that the Association was the spontaneous result of the organizational desires of its employees is not supported by the record. As noted above, just before the Association was formed, Foreman Johnson permitted his assistant, Walker, to address all employees on the night shift and urge the formation of an inside organization. The Association was thereafter formed. Solicitation of members occurred openly and during working hours. Association cards were distributed by Johnson and Kroening. Foreman Friar joined the organization and told employees

¹¹The findings as to the additional remarks made by Sullivan at the night shift meeting rest upon the credible testimony of employee Davis. As to the other remarks, the findings are based upon a document in evidence which Sullivan described as being the transcription of notes made by his stenographer of his statement to the day shift. No stenographer was present at the night session. He denied having advised employees to join the Association. The undersigned does not accept his denial as true.

Board's Exhibit No. 8—(Continued)

that he favored the Association.¹² Nor did the respondent cease to interfere with and give support to the Association after its organization. As found above, Leadman Cadaret was permitted to leave his work on the night shift to attend Association meetings, without pay deduction, Chief Inspector Williams was consulted as to whether or not one of the employees under him could serve as an Association officer, and Sullivan plainly advised employees on the night shift in November, that it would be best for them to join the Association.

The undersigned finds that by the foregoing acts the respondent has dominated and interfered with the formation and administration of the Association and has contributed financial and other support to it, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent as described in Sec-

¹²Although the record contains persuasive evidence that leadmen who formally organized and became officers of the Association possessed supervisory powers, the undersigned considers it unnecessary to determine that point here. Whatever their supervisory powers, it is clear that they were acting with the support and approval of management.

Board's Exhibit No. 8—(Continued)

tion I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, it will be recommended that the respondent cease and desist from such conduct and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

Having found that the respondent dominated and interfered with the formation and administration of the Association and contributed support to it, the undersigned therefore will recommend, in order to effectuate the policies of the Act and to free the respondent's employees from such domination and interference, and the effects thereof, that the respondent withdraw all recognition from the Association as representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment and completely to disestablish it as such representative.

It has also been found that the agreement of June 16, 1943, entered into by and between the respondent and the Association has been a means whereby the respondent has utilized an employer-

Board's Exhibit No. 8—(Continued)

dominated labor organization to frustrate self-organization and defeat genuine collective bargaining by its employees. Under these circumstances any continuation, renewal, or modification of this agreement would perpetuate the conditions which have deprived the employees of the rights guaranteed to them by the Act and would render ineffectual other portions of these remedial recommendations. It will therefore be recommended that the respondent cease giving effect to any agreement between it and the Association, or to any modification or extension thereof. Nothing in these recommendations, however, should be taken to require the respondent to vary these wage, hour, and other substantive features of its relations with the employees themselves, if any, which the respondent established in performance of the said agreement as extended, renewed, modified, supplemented or superseded.

Upon the basis of the foregoing findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Association of Machinists, Lodge No. 311, affiliated with the American Federation of Labor, and Kinner Motors Employees Association, Inc., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Kinner Motors Em-

Board's Exhibit No. 8—(Continued)

ployees Association, Inc., and contributing financial and other support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Kinner Motors, Inc., its officers, agents, representatives, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Kinner Motors Employees Association, Inc., or with the formation or administration of any other labor organization of its employees, or from contributing financial or other support to Kinner Motors Employees Association, Inc., or to any other labor organization of its employees;

(b) Recognizing Kinner Motors Employees Association, Inc., as the exclusive representative of its employees for the purposes of collective bargaining;

Board's Exhibit No. 8—(Continued)

(c) Giving effect to its contract of June 16, 1943, with Kinner Motors Employees Association, Inc., or any revision, renewal, extension, modification, or supplement thereof, or to any superceding contract which may now be in effect;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Withdraw all recognition from Kinner Motors Employees Association, Inc., as the representative of any of its employees for the purposes of collective bargaining with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Kinner Motors Employees Association, Inc., as such representative;

(b) Post immediately in conspicuous places throughout the respondent's Glendale, plants, and maintain for a period of sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b),

Board's Exhibit No. 8—(Continued)

(c) and (d) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-first Region, in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith;

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notify said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief,

Board's Exhibit No. 8—(Continued)

the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS

Trial Examiner

Dated: January 25, 1944.

ROSS NICHOLS

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. Do you remember the incident of the lay-off of Mr. Swope? A. I do.

Q. What occurred at that time? What action did you take in connection with the lay-off? What did you do in connection with it?

A. Well, I simply—when I got to the termination of the work where I wasn't able to supply further work for him, why, I had to make out a release and lay him off.

Q. Did you talk to anybody in connection with that?

(Testimony of Ross Nichols.)

A. No, outside of Mr. Davey in the morning.

Q. Did you talk to Mr. Davey about it?

A. Oh, yes.

Q. What did you tell Mr. Davey?

A. Well, I simply pointed out the work was getting so slack that I didn't know what to do with the night men, and particularly Mr. Swope at that time. The job that he was on should have been finished the night before, and it was only half finished; so I had to lay him off that same day.

Q. Did you have enough work for him on the night he was [495] laid off, to go through the entire night?

A. No. The job he had started, why, it was the only job I had ahead of him.

Q. Would it have taken the full night shift to have finished that work?

A. No, I should say—well, as I said, he should have had it done the night before. It only probably would take no more than two or three hours to finish it.

Q. If you had kept him it would have been an economic loss for the balance of the time?

A. That is right.

Mr. Esterman: That is objected to as calling for the conclusion on a matter within the province of the Examiner and the Board to decide.

Trial Examiner Spencer: I think it is rather an improper question on direct examination. I will take the answer, if you want it. It is very leading.

Mr. Collins: Yes.

(Testimony of Ross Nichols.)

Mr. Esterman: May I hear the question?

(The record was read.)

Mr. Esterman: It is objected to on the further grounds the question is meaningless, ambiguous and unintelligible.

Trial Examiner Spencer: He may answer.

What is your answer?

The Witness: Answer to what? [496]

Trial Examiner Spencer: The question.

Mr. Collins: Will you read the question again?

(The record was read.)

The Witness: That is right.

Q. (By Mr. Collins): When did you report this situation in connection with the lack of work as to Mr. Swope to Mr. Davey?

A. It was early in the morning.

Q. February 16th?

A. The day I laid the man off. Is that the 16th?

Q. I believe it was. Did you talk to Mr. Swope that evening?

A. I did.

Q. Where did you see him?

A. At his machine.

Q. Incidentally, is there any policy at Kinner's about notifying anybody relative to their lay-off or discharge prior to the time that they are laid off?

Mr. Esterman: If he knows.

Q. (By Mr. Collins): If you know.

A. I do not know.

Q. Where did you see him?

A. Mr. Swope?

(Testimony of Ross Nichols.)

Q. Yes. A. At his machine. [497]

Q. What did you say to him?

A. I told him that the work was getting so slack I would have to lay him off. [498]

Q. Now, did you ever notice Mr. Swope wearing any A. F. of L. badges, union buttons?

A. I did not.

Trial Examiner Spencer: Did you ever see him wearing any kind of a union button?

The Witness: No. [499]

Trial Examiner Spencer: It may stay on the record.

Q. (By Mr. Collins): What was the cause of the lay-off in connection with Gilpin and Davis?

A. Insufficient work.

Q. Did you talk to anybody about that?

A. Nobody except Mr. Davey.

Q. What did you say to Mr. Davey?

A. Practically the same thing I said to him previous to the time when I laid Mr. Swope off.

Q. What was that? What did you tell him?

A. The work was so slack I didn't know what to do with the men.

Q. What did he say?

A. Well, he said, "Use your own judgment. You will have to do what you consider best."

Q. Since February 23rd has there ever been operated any night shift in the tool room at Plant No. 1? A. No. [501]

Q. Has it been necessary at any time in your opinion, since February 23rd, to operate a night shift in the tool room in Plant No. 1?

(Testimony of Ross Nichols.)

A. No.

Mr. Esterman: I object to that on the ground there is nothing in this record to show this witness is qualified to give that opinion. I don't know how long he has been with the company.

Q. (By Mr. Collins): How long have you been with Kinner Motors, Inc.?

A. I started with Kinner's the 2nd day of January, 1929.

Q. Have you been with them constantly?

A. No.

Q. How long were you with them after 1929?

A. The last time that I started with Kinner's I think it was in '35 or '36.

Q. You have been with them continuously since '35 or '36?

A. Every day; sometimes seven days a week.

Q. How long have you been in charge of the tool room work?

A. Practically ever since.

Q. Since 1935 or 1936? A. Yes.

Q. During that time have you been in charge of the work? A. Designing—yes.

Mr. Esterman: One moment, please. I would like to hear [502] the rest of the question and I would like to hear the rest of the answer. The witness answered before the question came out.

Trial Examiner Spencer: Read what you have of it.

(The record was read.)

(Testimony of Ross Nichols.)

Trial Examiner Spencer: "Designing, yes," is that the answer you wanted to give?

The Witness: I have been in charge of the work since I have been reinstated at that time.

Mr. Esterman: Does that mean in charge of the tool room work? I am sorry. I must know.

The Witness: Tool room work.

Trial Examiner Spencer: I didn't understand the word "reinstated." What did you mean by that?

The Witness: That was after the period that I was off and went back in '35.

Q. (By Mr. Collins): Now, may I ask you this: Mr. Nichols, in your opinion, since February 23rd up to now, is it necessary or has it been necessary to operate the night shift in the tool room in Plant No. 2? A. Plant No. 2?

Q. Plant No. 1.

A. No, not in Plant No. 1. [503]

Q. (By Mr. Collins): Now, did you have any talk with either Gilpin or Davis on the night of the 23rd, when they were laid off?

A. There was some talk. I don't remember——
[504]

Q. (By Mr. Collins) Did you discuss the lay-off?

A. Yes, on account of the lack of work.

Q. You told them that? A. Yes.

Q. Where was that?

A. That was at the tool room door entrance.

(Testimony of Ross Nichols.)

Q. About what time of the day?

A. Between 6:00 and 6:30.

Q. Was anybody else present?

A. Not except the guard that was with the two men, that came from the personnel office.

Q. What did they say when you said it was for lack of work?

A. I remember one quotation one of the other—yes, Mr. Gilpin said that he thought it was—it sounded fishy.

Q. What did you say?

A. I made no remark.

Q. Was anything else said about it?

A. Not that I remember. [505]

Q. Now, prior to the time that Swope and Davis and Gilpin were laid off, what was the condition of the work, both as to the day shift and the night shift in Plant No. 1, as to whether or not it was increasing or diminishing, or how it was occurring in regard to tool room work?

A. It was gradually decreasing right along.

Q. Prior to the lay-off of these three men had you had a larger force on the night shift?

A. Oh, yes, some year and a half or so before that.

Q. How many did you have at one time?

A. Both day and night there was probably between 35 and 40; 50, something like that.

Q. How many on the night shift?

A. There was probably at one time as many as 15.

(Testimony of Ross Nichols.)

Trial Examiner Spencer: When would you say that was?

The Witness: That would be at least—let's see, the latter part of '42.

Trial Examiner Spencer: It is your testimony the latter part of 1942 you had about 15 men employed in the tool room on the night shift?

The Witness: Yes. [506]

Cross Examination

Q. With respect to Mr. Dick Swope's lay-off on February 16th, who made the decision to lay him off? A. I wrote up the release. [512]

Q. Now, who decided, if you know, to lay off Lewis Gilpin and Jim Davis?

A. Who decided?

Q. Yes, if you know. A. I decided myself.

Q. Calling your attention to the fact they were laid off on the night of the 23rd, when did you decide to lay them off? A. That day.

Q. The same day? A. The same day.

Q. What circumstances caused you to make that decision?

A. Because I had no work for them to do.

Q. Did you discuss that with anyone?

A. Yes.

Q. Who? A. Mr. Davey, in the morning.

Q. The same day?

A. That same day, sure. [533]

Q. Was anyone else present when you talked it over with him? A. Oh, no.

(Testimony of Ross Nichols.)

Q. Tell us what your discussion was with Mr. Davey. Tell us what you said and what he said.

A. I told him the time was drawing to such a close on work I didn't know what to do with the men, in order to keep them in work. I was giving them little insubordinate jobs that didn't amount to anything. I just simply run out. I didn't know what to do with them.

He told me, "Well," he says, "the only thing you can do is lay them off, as far as I can see."

Q. Did you mention either Gilpin or Davis by name to him?

A. Not particularly by name, because they were the only ones on nights at the time.

Q. You mean in the tool room?

A. In the tool room.

Q. Did you say anything to Davey about the tool room? Tell me again what you told Mr. Davey.

A. I told Mr. Davey I was running short of work, that I had nothing for these two men to do.

Q. Did you name them?

A. I don't particularly remember that I mentioned their names.

Q. Did he ask who they were? [534]

A. No, he didn't ask me, because it was clearly understood who they were.

Mr. Esterman: I move to strike the witness' answer beginning with the word "because." It is clearly not responsive and gratuitous information furnished by the witness.

(Testimony of Ross Nichols.)

Trial Examiner Spencer: All right. That portion may be stricken.

Q. (By Mr. Esterman) I asked you if Mr. Davey, at the time of that discussion, mentioned the name of Gilpin at any time? A. No.

Q. Did he mention the name of Davis at any time? A. No.

Q. Did he mention either name? A. No.

Q. Thank you. When you decided to lay them off on that day, February 23rd, according to this record,— A. Right. [535]

Q. Did you make out a slip like that for Swope when you laid him off? A. Oh, yes.

Q. What did you put on his slip, Swope's?

A. What did I put on it?

Q. Yes. What did you write on it?

A. I instructed the stenographer to write "lack of work," [548] which was the reason why I was laying Swope off.

Q. What you have just told me is what you wrote on the slip? A. That is right.

Q. Did you make out one or two slips for Gilpin and Davis? A. One slip for each one.

Q. Those were pink slips, too? A. Yes.

Q. What did you write on Gilpin's, the same thing, "lack of work"? Tell me what you wrote.

Mr. Collins: I object to that, incompetent, irrelevant and immaterial.

Trial Examiner Spencer: All right. He testified he told the stenographer to write on Swope's

Testimony of Ross Nichols.)

slip. He hasn't testified he wrote anything on Davis' and Gilpin's.

Mr. Esterman: I beg your pardon.

Trial Examiner Spencer: I don't think.

Q. (By Mr. Esterman) Did you make out a slip for Gilpin when you laid him off?

A. I had the stenographer make one out.

Q. You went in and told her to make slips out?

A. That is right.

Q. What did you tell her?

A. I told her to make out a release for Mr. Gilpin and Mr. Davis. She wanted to know what foundation, and I told her [549] that "lack of work," and she simply typed in the "lack of work."

[550]

Redirect Examination

Q. You have noticed the machine shop, which is next to the [571] tool room, from time to time recently; have you not? A. Yes.

Q. And up to February 23rd? A. Yes.

Q. Tell the Board anything you observed as to whether or not the number of people working in the machine shop increased or diminished in the last six months up to February 23rd?

A. They kept on diminishing right along.

Q. How many did you say were working in the machine shop on February 23rd?

Mr. Esterman: What shift?

Mr. Collins: On the night shift.

The Witness: February?

(Testimony of Ross Nichols.)

Q. (By Mr. Collins) 23rd?

A. At that time I would probably say there was maybe a dozen or more.

Q. How many now on the night shift in the machine shop?

A. About a half a dozen. [572]

EDWARD DAVEY

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. Do you recall an incident on or about February 16, 1943), in which you had a talk with Mr. Nichols with relation to the tool room at Plant 1?

A. Yes, sir.

Q. Who was present?

A. Just Mr. Nichols and myself.

Q. Where was it located?

A. Right in my office.

Q. What time of day was it?

A. Well, I should say about a quarter to 8:00.

Q. What was said?

Trial Examiner Spencer: 8:00 a.m., I take it, in the morning?

The Witness: What is it?

Trial Examiner Spencer: I take it it was in the morning?

The Witness: Yes. Mr. Nichols stated he was

(Testimony of Edward Davey.)

running out of work, which had been evident for some time other places.

Q. (By Mr. Collins) What did you say?

A. Well, I says,—I think I told him, “Mr. Nichols,” I says, “you know that is your job.”

Q. Was anything said in connection with lay-offs? [589]

A. Well, I guess he mentioned it. I said, “Well, I guess that is it.”

Q. Did he mention any persons’ names as to laying off at that time?

A. I don’t recall. I can’t say. He might have mentioned it and he might have just said, “The tool room at nights.” I don’t know. I wouldn’t say. I couldn’t say.

ROSS NICHOLS

called as a witness by and on behalf of the company, having been previously duly sworn, resumed the stand and testified further as follows: [590]

Recross Examination

Q. (By Mr. Esterman) You have testified, Mr. Nichols, that in connection with Swope’s lay-off you went to him and told him he was laid off because of lack of work, or words to that effect?

A. Yes.

Q. I am talking about Dick Swope.

A. Yes.

(Testimony of Ross Nichols.)

Q. You testified in connection with Gilpin and Davis, their lay-offs, you told the girl to make up the slips and that you first saw them about 10 minutes to 6:00? A. Yes.

Q. That would be about 20 minutes after the shift started? A. That is right.

Q. Now, did you have any reason for laying off Swope by telling him personally and laying off Davis and Gilpin the way you did lay them off?

A. The way I did?

Q. As I understand your testimony,—I want to make it clear—in Swope's case you went to him, after the shift had started, and after he was at his lathe——

A. Yes; that was when he came in that night. He came in directly through instead of going to the personnel first. The other two men, they went to the personnel first, before they came in that night. I didn't have a chance to see them [591] until after they came from the personnel.

Q. You knew that their time cards were taken out of the rack; didn't you?

A. No, I didn't know the time cards were taken out.

Trial Examiner Spencer: Mr. Nichols, you had already issued instructions that Gilpin and Davis were to be laid off before Gilpin and Davis came into the plant; is that right?

The Witness: That is right.

Trial Examiner Spencer: Was that true of Swope?

(Testimony of Ross Nichols.)

The Witness: That is right.

Trial Examiner Spencer: You had also issued instructions on Swope?

The Witness: That is right.

Trial Examiner Spencer: I see.

Q. (By Mr. Esterman) Did you say anything to Davis and Gilpin to the effect you didn't know anything about it?

A. That I didn't know anything about it?

Q. Yes. Or words to that effect? A. No.

Mr. Esterman: That is all. [592]

EDWARD DAVEY

called as a witness by and on behalf of the company, having been previously duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Collins) Mr. Davey, subsequent to that, did you ever have another conversation on or about February 23rd with Mr. Nichols with relation to the night shift in the tool [593] room?

A. That is right.

Q. When was that?

A. On the day he stated.

Q. About what time of day?

A. The same. I get in my office about a quarter of 8:00.

Q. Who else was present, if anyone?

A. No one.

(Testimony of Edward Davey)

Q. What did he say at that time? What was the conversation? What did you say?

A. The best I can recollect is that he said that he had reached the end of his work.

He said: "I can't find any more work."

I says, "Well, we are suffering the same in the machine shop."

Q. What else was said?

A. That is about all.

Q. Did he say anything in regard to closing the tool room?

A. Oh, he said, "What about it?"

I said, "That is up to you. That is your job to keep that tool room in shape and get the necessary tools out and all that."

Q. Can you remember any more of the conversation?

A. No, I can't say I do.

Q. Now, prior to February 16, 1944, had you ever seen any [594] union buttons, such as any of these three (indicating) which I show you, being worn by either Gilpin, Davis or Swope?

A. Never; never.

Mr. Collins: May I introduce these merely for identification?

Trial Examiner Spencer: Yes.

(Thereupon, the documents referred to were marked Company's Exhibits 1-A and 1-B, for identification.)

Mr. Collins: We have all referred to them.

Q. (By Mr. Collins) Did you ever know that

(Testimony of Edward Davey)

Mr. Davis was soliciting from the employees of Kinner Motors, Inc., that they sign authorization cards or membership cards in the Machinists Union? A. No, sir.

Q. Did you ever know that Mr. Swope was working in preparation for the hearing before the National Labor Relations Board in December?

A. Might I ask you to clarify that? I don't know even what you mean by "did I know." I only knew that he was up here.

Q. Outside of that you knew he was here?

A. I don't know.

Q. Did you know what he was doing when you saw him here?

A. I wasn't here when the testimony was taken; I don't know. [595]

Q. Outside of seeing him here did you know whether or not he was finding data in the plant or in any other way assisting in the preparation?

A. To the best of my knowledge, no. [596]

GLENN HENRY GILMORE

called as a witness by and on behalf of the company, being first duly sworn, was examined and testified as follows:

Cross Examination

Q. (By Mr. Collins) Did you ever have any conversation with Mr. Davis, Mr. Gilpin, Mr. Swope about war bonds? [620]

(Testimony of Glenn Henry Gilmore.)

A. I did with Mr. Gilpin and Mr. Davis, but not with Mr. Swope.

Q. When?

A. It was last fall. I don't know what month.

Q. Where?

A. In the tool room after 4:30.

Q. Who was present?

A. Well, Mr. Malamphey and the rest of the boys in the tool room; some of the fellows ain't there now.

Trial Examiner Spencer: 2:30 p.m., afternoon?

The Witness: After 4:30 p.m.

Trial Examiner Spencer: After 4:30?

The Witness: That is right. Mr. Davis and Mr. Gilpin came on at 4:30, came on at work.

Q. (By Mr. Collins) What was said, Mr. Gilmore? Now, you tell what they said and what you said, the best you can remember.

A. I heard—the question came up. I didn't hear the first of it. It came up about war bonds. I heard Mr. Gilpin say they was no God damn good, and, naturally, I got up on my high-horse and told them what I thought about it.

Q. What did you say?

Mr. Esterman: Just a moment. I move to strike out the answer beginning with the words "and naturally."

Trial Examiner Spencer: They may be stricken.

[621]

What did you say?

Q. (By Mr. Collins): What did you say?

(Testimony of Glenn Henry Gilmore.)

A. I said, I told him—Jim Davis said to me, he says, “As far as I am concerned they are no damn good. How do I know you are going to cash them in when they mature? The country might not be any good.”

I said, “I think the country is plenty good. I like it here. If you don’t like it here, why in the hell don’t you get out.”

As I recall, I told Jim Davis, “Why don’t you go back to Texas?”

Q. What did he say to that

A. He said he liked it here. I can’t recall all that was said. There was a lot said; day after day it went on.

Q. Did you have other conversations to the same effect with him?

Trial Examiner Spencer: With “him” meaning whom?

Mr. Collins: Davis.

The Witness: No; Mr. Gilpin offered to sell me a bond for \$10.00. Right at that time I didn’t have \$10.00.

Q. (By Mr. Collins): When did he offer to sell you a bond for \$10.00.

A. That I don’t know. Right after that came up. I think it was right after the second bond drive.

Q. What did he say when he offered it to you?
[622]

A. Well, he said he would rather have that than nothing at all.

Q. What did you say?

(Testimony of Glenn Henry Gilmore.)

A. That would be pretty tough to say right here.

Q. Did you use cuss words?

A. I sure did. And I got accused afterwards for being tough about it. [623]

Q. Did he say anything on that occasion in connection with war bonds?

A. Yes. He said they were no good. He said if everybody felt that same way, like that, it probably would be a better country to live in. [624]

Q. (By Mr. Collins): Did you hear any conversations, other than you have testified to, in which Mr. Davis said anything about war bonds?

A. Yes. I heard him several times say they didn't think the war bonds were worth a damn.

Q. Who did they say it to?

A. Mr. Malamphey. [625]

Trial Examiner Spencer: You heard both of them or which one?

The Witness: Off and on alternately.

Trial Examiner Spencer: Did you hear both Davis and Gilpin say that?

The Witness: Mr. Gilpin and Mr. Davis. [626]

VERA H. ALLEN

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Collins): During that time, at any time did you talk to—do you know Mr. Davis?

(Testimony of Vera H. Allen.)

A. Yes, sir, I do.

Q. During that time did you have any talk with him about buying war bonds? A. Yes, sir.

Q. When was that? [632]

A. Well, at the time of the drive I asked all of the fellows in that plant—there were only about a dozen in that plant. I asked Jimmy Davis, too, if he would buy a bond. He turned me down.

Q. What did he say?

A. He said he had taken all he could at the time. His child had a penny coin bank. He told me he had added to the contents of that bank and had bought a bond at the time for the child. And he was not in a position to buy any more then, he was moving to Roscoe.

Q. Did he say anything further in connection with the bonds?

A. Not at that time, but later on, during the drive, a few nights later, he stopped by my machine there while I was completing a bond for somebody else; I forget who it was. There was no one else present at the time. He made the statement that the bonds would not be worth a nickle after the war.

Trial Examiner Spencer: Was anybody present besides yourself and Davis at that time?

The Witness: No. To the best of my recollection I don't believe so.

Q. (By Mr. Collins): Did you overhear him say anything else in connection with war bonds at any time?

(Testimony of Vera H. Allen.)

A. Yes; to other people.

Q. When? [633]

CLIFTON EDMOND MALAMPHEY, JR.

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. What was said?

A. Well, they claimed that the war bonds were——

Q. Give the whole conversation. He said this and I said this, to the best of your ability. Say what he said and what everybody said, the substance of it. I know it is hard to do.

A. I will lead up to that. We get our bonds in any envelope——

Mr. Esterman: Just a moment. The question is what was said. I ask the remarks of the witness be stricken on the ground it is not responsive.

Mr. Collins: Just let him finish and see if it is going [652] to be responsive.

Mr. Esterman: It is obviously not responsive. I am not going to have these matters spread on the record. I don't want any history. I want the conversation from this witness.

Trial Examiner Spencer: I am making the rulings here.

You proceed with your testimony.

(Testimony of Clifton Edmond Malamphay, Jr.)

The Witness: As I was saying, we get our bonds in an envelope, the period when they are due, and usually everyone has one in his hand, you know, because they are always examining them and seeing if they get their proper amount. We all had our bonds, and these two fellows, Mr. Davis and Mr. Gilpin, had theirs, too. They said they were no good. They would be no good after the war. And they said they were also selling them as soon as possible.

Trial Examiner Spencer: Did each one of them say this, or both of them?

The Witness: Mr. Davis said that. He was selling them as soon as possible.

Trial Examiner Spencer: You will have to bring it down. We will have to have what each one said.

The Witness: All right. Mr. Davis said he was selling them as soon as possible. Mr. Gilpin said he would sell them to anyone for \$10.00. He will admit it. I took it home. [653]

JOHN A. SZABO

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. Where was it?

A. That was one night in front of the clock when there was a bulletin up there stating that there was going to be another blood donation.

(Testimony of John A. Szabo.)

Q. Wait a minute. Who was present?

A. Well, I can recall Davis was, Mr. Gilpin and Johnson and Koler and Les Dayhoff and myself, that I remember of.

Q. What was said? [678]

A. Gilpin said that the Red Cross was making money on the blood; they were selling it.

Mr. Esterman: Will counsel fix the time, please?

Q. (By Mr. Collins): When was it? What day of what month or in what month?

A. It was in January some time. I don't know the date.

Q. What was said? What time of day was it?

A. Just before quitting time. We used to quit at 3:30 at that time.

Q. What was said? [679]

A. Well, we were all talking about blood donations and Johnson comes along and said, "Are you fellows going to sign up for the blood bank, for blood donations?"

Gilpin said, "Well, the Red Cross is making money on that." He said, "They are selling that blood."

Q. What did anybody else say when he made that remark?

A. No one said anything; didn't say a word.

Q. Was there a deep silence? A. Yes.

Q. Was anything else said? A. No.

Q. Now, have you ever been present when either Mr. Davis or Mr. Gilpin said anything about War Bonds or Mr. Swope? A. Yes.

(Testimony of John A. Szabo.)

Q. Yes or no? A. Yes.

Q. When was that?

A. Well, I don't remember the date.

Q. Do you remember the month?

A. Well, it was in January.

Q. Who was present?

A. At one time there I remember Gilpin and Davis, and I think Mr. Gerth was up there, and that was up in the Men's Room.

Mr. Gilpin says, "I see they are selling them War Bonds [680] again."

I said, "Yes." I said, "I got about \$1500.00 worth."

He said, "Well, they won't be worth a nickel after the war. They won't be no account." That is just how he said it. Of course, I didn't say anything——

Trial Examiner Spencer: Was there anything further said?

The Witness: No. I went right downstairs from there.

Q. (By Mr. Collins): Did anybody say anything further?

A. Not that I, because I went as soon as—when he said, "They won't be worth a nickel" I went downstairs.

Trial Examiner Spencer: Your answer was no; is that right? There wasn't anything further said? The question was was there anything further said. What is your answer?

(Testimony of John A. Szabo.)

The Witness: No, there was nothing further said.

Q. (By Mr. Collins): Were you present at any other conversations or did you participate in any other conversations with Davis, Swope or Gilpin at which War Bonds were mentioned?

A. I know Johnson come by one night—that is the night foreman—Swope was walking by and he said, “Swope, have you signed up for a War Bond?” Swope was walking by.

He said, “I wouldn’t give you a nickel for any War Bond.” This was all said while he was walking by. He kept going, and that is all that was said. [681]

He said, “Helen Allen over there is selling them.”

Q. Was there any other time that was said by Swope? A. Yes.

Q. Any other time?

A. Well, I think that at one time Jack Brown, while he was still there, one time they were setting there eating lunch, and the War Bond drive come in, talking about War Bonds. Swope said he wouldn’t give a nickel for any War Bond. [682]

Cross-Examination

Q. (By Mr. Esterman): Did you ever discuss War Bonds with any one else, other than Frank and these other gentlemen?

A. No, I asked Vera Allen if anybody bought Bonds, and she said, “Everyone but the three boys in the tool room.” [688]

(Testimony of John A. Szabo.)

Q. You asked whom? A. Vera Allen.

Q. That is the lady that was on the stand awhile ago? A. Yes.

Q. Did you discuss Bonds with anyone else at the plant, other than the people you have mentioned?

A. Well, I talked to Mr. Garrett one night. We were standing there grinding a tool, and he was waiting until I got done. I says, "What do you think of those fellows making that remark up there in the Men's Room?" I says, "Now supposing that they were out at the Victory House here and the man got up there and asked, 'Who wants to buy a Bond?' And someone got up and says, 'The Bond isn't worth a nickel. I wouldn't give you a cent. They are no good'."

I said, "What do you think would happen to such a person?" That is all the conversation I had.

Q. What did he say?

A. Well, he said, they would probably mob him.

[689]

FRANK PETER HOLMES

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination

The question is did you have a conversation with either Davis or Gilpin about war bonds?

The Witness: Yes.

(Testimony of Frank Peter Holmes.)

Q. (By Mr. Collins): When was that?

A. It was some time in July, I think. I don't know just when it was; when I got my first \$50.00 bond.

Q. July when? A. July, 1943.

Q. You say you got your first what, \$50.00 bond?

A. \$50.00 bond. I started there in June, June the 1st, [718] so I didn't get that bond until about July.

Q. You started your employment there?

A. I started to work there June 1, 1943.

Q. How many bonds were you subscribing for?

A. \$50.00 bond a month.

Q. Where did you have this conversation with Mr. Davis and Mr. Gilpin? Where was the conversation?

A. Down at the shop there.

Q. What shop? A. At Kinner Motors.

Q. The tool shop or the machine shop?

A. The tool shop.

Q. In the tool shop? A. Yes.

Q. Who else was present at the conversation? I mean in the conversation.

A. I don't think there was anybody else in there. I couldn't say.

Q. What was said? What did you say and what did they say?

A. I told them I got a \$50.00 bond a month. Then they said that they wouldn't be worth \$5.00 apiece after the war.

(Testimony of Frank Peter Holmes.)

Mr. Esterman: May we find out who said this?

Q. (By Mr. Collins) Who said that, do you remember? A. Both of them.

Q. Did they say anything else? [719]

A. No.

Q. What did you say?

A. I didn't know what to say to them. [720]

JOHN HARDING SHELLEY,

called as a witness by and on behalf of the company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. Do you know either Mr. Davis, Mr. Lewis Gilpin or Mr. Richard Swope?

A. I do. I know all three of them.

Q. Have you ever had a conversation with any one of them or all three of them or any two of them in which war bonds have been mentioned?

A. I have on a number of occasions.

Q. With whom?

A. Well, with practically all of the tool room part of the shop on various occasions, just with them by themselves.

Q. Will you name one of those occasions?

A. Well, right after the first bond drive was one occasion. Another occasion was——

Q. Let's take that one, after the first bond drive. [735] Who was present at that time?

(Testimony of John Harding Shelley.)

A. Glenn Gilmore, Davis, Gilpin and within a short time was Melamphey and Alf Gratrix.

Q. What was said?

A. Well, vaguely the discussion was, "I hope the bonds is all right after the war."

Q. Do you remember the next conversation?

A. Oh, I believe it was when I bought a bond. I said I [736] had gotten a \$50.00 bond, and they said, "You can paper the house with it."

Q. Who said it? A. Gilpin.

Q. What did he say?

A. "I guess we can paper the house with them when the war is over."

Q. What did you say?

A. I said a lot of people thought that way, but there were a lot of people that bought them, anyway, and I would take a chance.

Q. Was anything else said?

A. No, I believe that covers it. [737]

BRIAN CHARLES MICHAEL JOHNSON

called as a witness by and on behalf of the company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. Now, do you recall having a conversation with Mr. Sullivan relative to remarks that had been made by Davis, Gilpin or Swope in connection with the blood bank or war bonds?

(Testimony of Brian Charles Michael Johnson.)

A. Yes.

Mr. Esterman: Just a moment. I object to that as being incompetent, irrelevant and immaterial what conversation he had with Mr. Sullivan; a foreman talking to a personnel manager.

Mr. Collins: I am not going into the question of what was said. I think that is quite right. It is only for the purpose of fixing the time that this information was given to the personnel office.

Trial Examiner Spencer: Yes. I will take it on that [746] basis.

Mr. Collins: I don't care to go into what he said. That isn't the point.

Q. (By Mr. Collins): Did you ever?

A. Yes.

Q. When was that?

A. That was about the middle—the latter part of February, a couple of nights, two or three nights after the boys were let go, these three boys, Swope, Gilpin and Davis.

Q. Where did it occur?

A. In the canteen.

Q. You mean, when you say two or three nights after the boys were let go, you refer to which boys?

A. Gilpin, Davis and Swope.

Q. All three of them? A. Yes.

Q. At the time you had this conversation were any of them working there at Kinner's?

A. No, no, they had been let out two or three nights before.

Q. Had you, at any time prior to that time, said

(Testimony of Brian Charles Michael Johnson.)

anything to Mr. Sullivan relative to any remarks that may have been made by any one of these three boys in question, about war bonds? A. No.

Q. In connection with the statements of Davis, Gilpin and [747] Swope relative to the war bonds, did you prepare any statements to be signed by any persons?

A. I didn't prepare any, no. But a statement was dictated to me by one of the men.

Q. Who was that? A. John Szabo.

Q. Did you, as regard to any of the others, make out or prepare any statements or affidavits or anything of the kind? A. No.

Q. What was the method of your writing out the ones you wrote out for Szabo?

A. Well, Szabo was fighting mad. He wasn't in a position to write it.

Mr. Esterman: May I move you, Mr. Examiner, that the gratuitous statement of the witness be stricken from the record?

Trial Examiner Spencer: Yes. "Szabo was fighting mad" may be stricken.

Q. (By Mr. Collins): I don't mean that, Mr. Johnson. I mean did you write it? I am trying to get the method. Did you write it out or did he dictate it, or how was it done?

A. He dictated; as he told me what to put down on the paper, I put it down. His hands were grease and oil.

Trial Examiner Spencer: When was this statement dictated [748] to you?

(Testimony of Brian Charles Michael Johnson.)

The Witness: It was dictated to me about two or three nights after the fellow had left.

Trial Examiner Spencer: Was it the same night you talked to Mr. Sullivan or not?

The Witness: It was the same night I talked to Sullivan.

(The documents referred to were marked as Respondent's Exhibits 3-A, 3-B, 3-C and No. 2 for identification and received in evidence.) [749]

RESPONDENT'S EXHIBIT NO. 3-A

C. 3-A Johnson

2-28-43.

The fellows involved never talked to me much regarding war bonds as I told them at the start my attitude on the matter. However I did hear them make the remark several times that the bonds were no good.

WALLACE GERTH

RESPONDENT'S EXHIBIT NO. 3-B

2/28/44

On several occasions I have heard the tool room boys talking about the bonds and they insisted the bonds would be worthless after the war. And as I have three nephews in the war fighting at this time and want to do all I can to help them and

(Testimony of Brian Charles Michael Johnson.)
would like other people to do the same. The statements of these guys make me mighty mad.

JOHN A. SZABO

Gilpin says your 2000 won't be worth a cent after the war.

RESPONDENT'S EXHIBIT NO. 3-C

As official salesman for the 4th War Loan Drive (on night crew for Plant 1), every employee gladly signed up with the exception of the three men in question. They simply flatly refused to take part in this work that is so very vital to the winning of peace.

VERA H. ALLEN

RESPONDENT'S EXHIBIT NO. 2

AGREEMENT

between

KINNER MOTORS, INC.

and

KINNER MOTORS EMPLOYEES
ASSOCIATION, INC.

Effective Date

June 16, 1943

AGREEMENT

This Agreement made and entered into this 16th day of June, 1943, by and between Kinner Motors,

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Inc., hereinafter referred to as Company, and Kinner Motors Employees Association, Inc., a California non-profit corporation, hereinafter referred to as the Association:

Whereas, the Company and its employees, through their respective representatives are desirous of entering into a contract for the purpose of stabilizing employment and promoting harmonious relations between the Company and its employees;

It Is Hereby Mutually Agreed by and between the Company and the Association as follows:

ARTICLE 1

RECOGNITION

Section 1—Kinner Motors Employees Association, Inc., Exclusive Bargaining Agent

That Kinner Motors Employees Association, Inc., shall for the duration of the Agreement be recognized by the Company as the sole bargaining agency for the purpose of representing all of the Company's employees, with the exception of the following, to wit: Officers of the Company elected by its Board of Directors, monthly salaried executives, administrative and professional employees, and their secretaries, all outside salesmen and representatives, all foremen, full time guards and firemen, in all negotiations pertaining to hours, wages and other matters concerning their employment by the Company.

Administrative employees are hereby defined as

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

those employees who may exercise their discretion and independent judgment in performing their duties including, but not limited to, the right to hire and fire. This definition of administrative employees, however, shall not be construed as excluding any employee who holds the position of sub-foreman, lead man, or lessor position.

Section 2.—Duration of Agreement

This agreement shall become effective upon the date of its execution and shall remain in full force and effect for one year from the date hereof, and thereafter until either party hereto shall give to the other a sixty (60) day written notice of its desire to terminate this contract or to negotiate a new contract.

ARTICLE II

REPRESENTATION

Section 1—Bargaining Committee

The employees shall be presented by a bargaining committee of not more than nine members, to be elected by the Association in a manner which shall obtain as fair representation as is reasonably possible of all employees covered by this agreement. The representatives for the Company shall consist of not to exceed a like number to be chosen in such a manner as the Company may desire, and shall include at least one officer of the Company.

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Section 2—Jurisdiction of Bargaining Committee

The Bargaining Committee shall negotiate all contracts and agreements and all modifications and amendments thereof between the Association as a representative of the eligible employees and the Company in all matters pertaining to hours, wages, and working conditions; and shall serve as appeal agent of any unsettled matters which are duly presented to the Grievance Committee as in this agreement provided and which are not satisfactorily settled within a reasonable time.

Section 3—Meetings of Bargaining Committee

There shall be no regular meetings of the Bargaining Committee and it shall only meet if and when circumstances require the same. In the event that either the Association or the Company feels that a meeting of the Bargaining Committee is necessary, a meeting may be called by either party by giving at least ten days notice thereof to the other.

Section 4—Grievance Committee

The Grievance Committee shall be composed of not more than three members of the Association and not more than three representatives of the Company.

Section 5—Jurisdiction of the Grievance Committee

The Grievance Committee shall handle all matters of dispute arising out of the terms of the present agreement or future agreements which may be sub-

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

sequently entered into by and between the Association and the Company, including but not limited to the settlement of any and all grievances which may be filed with the Grievance Committee as provided for in this agreement.

Section 6—Meetings of the Grievance Committee

Regular meetings of the Grievance Committee may be held at 9:00 a.m. on every alternate Tuesday commencing with the second Tuesday after the effective date of this agreement or at such other times as may be mutually agreed upon by and between the parties hereto.

Section 7—Meetings to be Attended without
Loss of Pay

Attendance at all meetings as provided for herein shall be without loss of pay to any of the employees, but attendance at such meetings before or after any such employees regular shift shall not entitle such employee to pay for such additional time. If any of said meetings fall on a holiday the meetings shall be held within the following seven days, the date being mutually agreed upon.

Section 8—Counsel and Secretary

Both the Association and the Company may be represented at all meetings by legal or other counsel and shall each be entitled to a secretary to take the minutes of the meetings.

(Testimony of Brian Charles Michael Johnson.)
Respondent's Exhibit No. 2—(Continued)

ARTICLE III

GRIEVANCE PROCEDURE

Section 1—Waiting Period

It is mutually agreed and understood that should any dispute arise between the Company and any of its employees which cannot be settled by the grievance procedure provided for in this agreement that both parties hereto agree to submit said dispute to arbitration for the purpose of arbitrating and settling said dispute. The arbitration hereinabove provided for shall be handled by an Arbitration Committee composed of three members to be selected as follows, to wit: One of the arbiters shall be selected by the Company, one shall be selected by the Association, and a third and impartial arbiter shall be selected by the two arbiters selected as hereinabove provided. It is further agreed that there will be no strikes or lockouts or any interruption of operations by the Company or the Association or any of its members until an earnest effort for a period of not less than thirty (30) days have been made to settle such dispute through the procedure as provided for in this agreement. Both the Association and the Company hereby recognize the importance of preventing the stoppage of work in order to further the war effort and that each party hereto agrees in the event of a dispute to exercise every reasonable effort in order to prevent a stoppage or slowing up of production.

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

ARTICLE IV

SENIORITY

Seniority is not to be considered as a material factor in regard to any employee's position, but rather each employee's position shall depend upon his productivity, efficiency, ability, skill, effort and length of service.

ARTICLE V

EMPLOYMENT PROCEDURE

Section 1—Notification that Kinner Motors Employees Association, Inc., Exclusive Bargaining Agent

All new employees shall be notified by the Company immediately upon being hired that Kinner Motors Employees Association, Inc., is the exclusive bargaining agent of the eligible employees of the Company by delivering to each new employee a copy of this contract and shall demand a signed receipt for the same at the time the same is delivered.

Section 2—Reports to be Furnished upon Request

As soon as reasonably possible after the execution of this agreement the Company shall furnish to the Association a complete list of the eligible employees and their respective departments showing their classifications, seniorities, dates of hiring, and

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)
shifts and that as soon as reasonably possible after the hiring of a new employee the Company agrees to furnish similar information as hereinabove provided. Kinner Motors Employees Association, Inc., and the Company may request the following reports which are to be furnished as soon as possible;

(a) Upon a request of the Company, the Association shall certify to the Company the number of its members.

(b) Information concerning New Employees. Upon the request of the Association the Company shall certify to Kinner Motors Employees Association, Inc., the number of new employees that are in the various occupational classifications recognized by this agreement.

(c) List of Employees. Upon the request of the Association, the Company shall furnish Kinner Motors Employees Association, Inc., with lists of employees and their respective departments showing classifications, seniorities, date of hiring, and shifts.

(d) Wage Rates in Event of a Grievance. In the event of a grievance being registered concerning the rate of wage of an employee, the Company agrees to furnish to the Grievance Committee of the Association the rates of wages of the various employees in the particular department in which the employee may be working for the purpose of determining whether or not the grievance is well-founded. It is agreed that the Association and all

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

persons connected therewith will keep all information furnished them under this Article strictly confidential.

ARTICLE VI

HOLIDAYS WITH PAY

Subject to Executive Proclamation and federal regulations, all employees regardless of whether working on a straight salary or whether on an hourly or daily rate, shall receive the following legal holidays with pay at the regular normal rate of pay, to wit: January 1 (New Year's Day), May 30 (Memorial Day), July 4 (Independence Day), Labor Day, Thanksgiving Day, and December 25 (Christmas Day).

If and when present executive proclamations and other rules and regulations of the Federal Government are changed so as to permit the same, an employee who works on any of the hereinbefore designated holidays shall be entitled to compensation in addition to his regular base wage, as follows, to wit: Full pay (8 hours at straight time) whenever the holiday falls on Monday through Friday; time and one-half whenever the holiday falls on Saturday and if the employee has already worked at least forty (40) hours in the work week in which the particular Saturday may fall. In the event forty (40) hours of work in a particular week is completed during the Saturday holiday, the rate of pay shall be prorated according to the schedule set forth

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

herein; and double time whenever the holiday falls on a Sunday. For all holiday work in excess of eight (8) hours two times the regular rate of pay shall be paid. No pay under this provision shall be granted employees during vacation or leave with or without pay except as provided in Article XI, Section 2 hereof. Should a recognized holiday fall on a Sunday, the Monday immediately following shall be observed as the holiday.

ARTICLE VII

HOURS OF WORK AND OVERTIME

Section 1—Straight Time

Straight time shall be paid for the first eight (8) hours in any one day and for the first forty (40) hours in any one week.

Section 2—Time and One-half

Time worked in addition to the employees' established work week (forty [40] hours) or in excess of eight (8) hours in one day shall be paid for at the rate of one and one-half ($1\frac{1}{2}$) times the regular rate.

Section 3—Double Time

Subject to Executive Proclamation and Federal regulations, time worked on the second overtime day (seventh consecutive day) of an employee's established work week or after eight (8) hours of an employee's holiday shall be paid for at two (2) times the regular rate. For an example, if an em-

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

ployee's established work week is Monday through Friday, then his second overtime day is Sunday for which he shall be paid two (2) times the regular rate.

ARTICLE VIII

WORKING CONDITIONS

Section 1—Report Time

An employee called to work shall receive the minimum of four (4) hours pay in the shift to which he was called.

Section 2—Bulletin Boards

At least one bulletin board shall be provided by the Company in a conspicuous place in each building occupied by the Company for the exclusive use of the Association. Such board shall be provided with a glass front and a lock, the access to which shall be limited exclusively to the Association for posting all notices in connection with the Association. The Association agrees not to permit the posting of any notices containing any statements in violation of any governmental law, rule, regulation or decree nor permit the same to be used for posting any obscene or indecent literature or pictures.

Section 3—Hiring Age

There shall be no established maximum age limit in hiring or discharging employees.

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Section 4—Pay Period

Pay checks for each employee shall be issued as at the present time, to wit, on the 5th and 20th day of each calendar month.

Section 5—Rest Period

The present practice concerning rest periods shall prevail, but no employee shall be required to work more than three (3) hours without a rest period of at least ten (10) minutes. During rest periods smoking shall be permitted in certain designated parts of the plants and grounds.

ARTICLE IX

SICK LEAVES

In case of illness of the employee or death in the immediate family, leaves with pay will be allowed up to a total of five (5) days per year, no more than three (3) of which will be allowable at any one time. The year period shall be computed from the date of his or her employment. Employees must notify the Personnel Department of the Company, if possible, within twenty-four (24) hours of physical disability or illness which may be verified by the Company Personnel Department.

ARTICLE X

WAGES

Section 1—Minimum For Apprentice Employees

No employee shall be hired even though he or she is an apprentice at less than 65 cents per hour.

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Section 2—Additional Pay for Leadmen

A leadman shall be paid at least five cents (5c) per hour more than the highest paid man under his jurisdiction.

Section 3—Advancements

All new employees after the beginning of his or her employment shall be considered probationary employees for a period of 45 days. At the end of said 45 days, said new employees shall either be dismissed for lack of proper qualifications or the minimum starting wage of 65 cents per hour above referred to shall be increased by at least five cents an hour.

Section 4—Limited Transfers

After an employee has worked for 45 days and is no longer a probationary employee, the Company may not transfer said employee to a higher paying position except in the event of an emergency (in which event the Company may require an employee to work in any position for a period not to exceed four weeks in any one six months' period) without paying said employee the rate applicable to said higher paying position.

Section 5—Not to be Construed as a Maximum

Nothing contained herein shall be construed as fixing a maximum wage for any particular job or occupation, except insofar as any federal proclamation or federal or state law or regulation inhibits

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

or shall inhibit from time to time classifications without maximum wage schedules.

Section 6—Reviews

The rate of pay and the employment record of each employee shall be reviewed by the Company within four (4) months from date of the execution hereof for the purpose of effecting wage adjustment in accordance with the employee's proven ability. Thereafter there shall be called a meeting of the bargaining committee and there shall be presented to it a true statement of the time and effort of the company required in such review procedure, and the parties hereto shall then mutually agree as to the time of reviews thereafter, it being expressly agreed, however, that such reviews shall thereafter be had not less than every six (6) months. Not less than seven (7) days after the end of said review period, each employee shall be notified as to the result of the review and if he does not receive an increase in his wage rate, he shall be notified of the reason or reasons why the increase was not given. The Association Grievance Committee is to inspect all non-increased wage reviews before the employee is notified by the Personnel Department.

After an employee has been classified for a period of four (4) months at the maximum rate of his grade, he may himself or through the appropriate bargaining agency, request and receive from the employer, a review of his qualifications to determine

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

whether or not he should be upgraded to an available job. If such review results in a favorable rating and if an appropriate job is available, he shall be upgraded to that job. If he is not upgraded he shall be entitled to another review at the end of each succeeding interval of four (4) months.

Section 7—Two Ten Hour Shifts

At the present time the policy of the Company has been to work two ten hour shifts and so long as said practice is continued the rate of pay for each shift shall be the same, except that the second shift shall receive a thirty minute lunch period in the middle of the shift for which they shall be paid at the regular rate. Nothing herein contained shall prevent the Company from working the said two shifts at lesser or longer hours on the same basis.

If and when three shifts are adopted the following shall prevail, to wit:

- (a) Night shift employees shall receive a bonus of five (5) cents an hour.
- (b) Third shift employees shall receive eight (8) hours pay plus a five (5) cent an hour bonus for working six and one-half ($6\frac{1}{2}$) hours.

Section 8—Dues to be Deducted from Pay Checks

The Company agrees to deduct Association dues from the pay checks of all those employees who authorize the Company to make the deductions. The

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Company reserves the right to cancel this provision at any time after ten days notice to the Association.

ARTICLE XI

VACATIONS

Section 1—Vacations with Pay to the Employees
Shall be Granted in Accordance with the
Following Schedule:

1. Employees who have completed one year's continuous service prior to the execution hereof or hereafter have completed one year's continuous service prior to December 1st in any year shall receive a vacation with pay for five working days at the base rate and at the employee's option he shall be entitled to an additional vacation of five working days without pay.

2. Employees who have completed prior to the execution hereof two years or more, continuous service or hereafter have completed two years' continuous service prior to December 1st in any year shall be entitled to a vacation with pay for 10 working days at the base rate.

Section 2—Compulsory Vacations

Employees must take their vacation within ten (10) months of the date of eligibility; otherwise the vacation will be forfeited. Employees shall state their preference with respect to vacation times on forms to be furnished by the Company and the Company shall allow such vacations at such time

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

as the employee involved can best be spared from his production duties. Under no circumstances shall any employee be entitled to more than one vacation in any one calendar year. It is likewise agreed that in the event the business requirements of the Company do not permit any particular employee to receive a vacation as in this article provided, the Company shall have the right to require said employee to continue work without such vacation, but in such event shall pay said employee double time at the base rate of pay for five working days, or ten working days as the case may be.

If a legal holiday occurs during an employee's vacation and said legal holiday by reason of the present Presidential proclamation or otherwise is a working day, then it shall not affect said vacation and shall be considered the same as any other working day on the other hand, if said legal holiday is a non-working day and falls within such employee's vacation period, then an extra day of vacation with pay at the base rate shall be given to such employee.

Section 3—Preference Based on Seniority

Vacation time preference shall be given to employees with the greatest length of service.

Section 4—Granted to Employees Laid Off

Any employee who quits or is discharged for cause will not be granted any vacation for which he is eligible at the time he is discharged. Whether or not the discharge is for cause shall be subject to approval of the Association, otherwise the employee

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

shall be entitled to all vacation for which he or she is eligible.

Section 5—Vacation Period

The vacation period shall be between February 1st and November 30th, unless the Company for a good cause should permit an employee to take a vacation at a different time.

Section 6. In the event the Company feels that it is for the best interest, efficiency or health of any employee to take a vacation, it shall have the right to require such employee to do so. All working days of such vacation, however, to be paid for by the Company at the base rate of pay.

ARTICLE XII

COPY OF AGREEMENT TO ALL EMPLOYEES

The Company agrees at its own expense and as soon as is reasonably possible, after the execution hereof, to print and furnish each employee both present and future, with a copy of this agreement, together with copies of any and all amendments or additions thereto as soon as reasonably possible after said amendments or additions are made and executed.

ARTICLE XIII

APPLIES TO ALL ELIGIBLE EMPLOYEES

All provisions of this agreement shall apply equally to all eligible employees regardless of

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)
whether they are on hourly, weekly, or monthly basis.

ARTICLE XVI

LEAVE OF ABSENCE

A leave of absence without pay may be granted employees for a period not to exceed ten (10) working days during the year. For good and sufficient reasons, the Company may extend the period of leave not to exceed six months. The leave of absence shall not in any way jeopardize the employee's standing with the Company. Upon return from leave of absence, the employee shall be reinstated at a rate no lower than the one held previous to the leave.

ARTICLE XV

PERFORMANCE

Either party hereto shall be entitled to require specific performance of the provisions of this agreement.

The waiver of any breach or condition of this agreement by either party shall not constitute a precedent for any future enforcement or waiver of such breach or condition.

ARTICLE XVI

REPRESENTATIVE ACCESS TO PLANT

A duly authorized representative of the Association other than an employee shall have access to the

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Company's plant during regular working hours when necessary for conducting an investigation of a grievance or for the purpose of investigating working conditions. Said representative or representatives shall obtain from the Company a specific authorization for each visit and such visits shall be subject to such regulations as may be made from time to time by the United States Army, the United States Navy, Federal Bureau of Investigation, and the Company. No Association business except as set forth herein and no solicitation of Association membership shall be conducted by said representative or representatives while in the plant as aforesaid.

ARTICLE XVII

NO REDUCTION OF WAGES

The Company agrees not to reduce the minimum rates above specified during the term of this contract and no employee shall suffer a reduction of wage rate as a result of the execution hereof.

ARTICLE XVIII

NO ADVANCEMENTS

No officer of the Association shall be advanced to a position making him ineligible for membership in the Association and that no officer shall resign from his position to accept a position making him ineligible for membership in the Association without the permission of the Board of Directors of the

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Association. This limitation shall not be construed as preventing said officer or director from receiving an increase in wage rate.

ARTICLE XIX

EMPLOYEE MEANS ELIGIBLE EMPLOYEE

Whenever the word "employee" is used in the foregoing agreement without qualification, such word shall be deemed to mean an employee eligible for membership in the Association.

ARTICLE XX

COPY OF WAGE SCHEDULES TO BE DELIVERED

A copy of the Company's present classifications and wage schedules for such classifications shall be delivered upon the execution of this agreement to such officer of the Association as the Board of Directors of the Association may designate to be kept in the Association's files. Any changes made in such classifications or schedules shall be delivered to such officer forthwith upon the making of such changes.

ARTICLE XXI

WAGE SCHEDULE

It is hereby mutually agreed that this agreement does not deal with the question of the Company's wage schedules and that this agreement shall not

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

be construed as an agreement on the part of either the Association or the Company that said wage schedules have their approval. Due to the present regulations of the War Labor Board, War Manpower Commission, Presidential Decrees and Proclamations and other Governmental rules and regulations, no attempt has been made to negotiate the question of wages at this time, and that the right to re-open negotiations concerning wages is hereby reserved.

ARTICLE XXII

AGREEMENT SUBJECT TO LAWS AND REGULATIONS

That all of the provisions hereof are made subject to all laws, rules, regulations and governmental proclamations, and in the event any clause or paragraph hereof violates all or any of the said laws, rules, regulations, or governmental proclamations, said clause or paragraph shall be inoperative until said laws, rules, regulations or governmental proclamations are changed. The fact that any particular clause or paragraph hereof may be illegal shall not, however, have any effect on the remainder of this agreement.

ARTICLE XXIII

NOTICES

Wherever a notice is provided for herein, it shall be given by mailing the same to the Company at its place of business, 635 West Colorado Boulevard,

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

Glendale, California, and by mailing a copy to the Association in care of Pearson & Proctor, Attorneys at Law, 218 Security Bank Building, Burbank, California, or at such other place or places as the Association may designate from time to time by sending a notice thereof to the Company as hereinafter provided.

ARTICLE XXIV

NONASSIGNABLE

This agreement and all rights hereunder shall not be transferable or assignable by Kinner Motors Employees Association, Inc., to any other organization.

ARTICLE XXV

CONTROL OF PLANT

The Company has and will retain the exclusive right and power to manage the plant and direct the working forces, including the right to hire, suspend, discharge, promote, demote or transfer its employees, except as limited by this agreement.

ARTICLE XXVI

PATENTS

Except in case of employees engaged in research, development, experimental or engineering work, the Company shall not exact or require (including as to present employees and notwithstanding any present agreement they may have with the Company in regard thereto), as a condition of employment or as

(Testimony of Brian Charles Michael Johnson.)

Respondent's Exhibit No. 2—(Continued)

a part of its contract of employment, that any inventions or improvements made thereon by any employee shall belong to the Company. Nothing in this paragraph contained shall be deemed to constitute a waiver as to any employee of shop rights to which the Company would be entitled if this agreement had not been entered into.

In Witness Whereof, the parties hereto have executed this agreement by their representatives thereunto duly authorized on the day and year first hereinabove written.

KINNER MOTORS, INC.

By: EARL HERRING

President

By: VICTOR SEMRAU

Secretary

KINNER MOTOR EMPLOYEES
ASSOCIATION, INC.

By: ROB'T L. STEVENS

President

By: VERA ALLEN

Acting Secretary

WALTER E. SIGAFOOSE

JAMES F. BROWN

JOHN WILLIAMS

KENNETH P. ENLOWS

LAWRENCE B. BROWN

FLOYD C. PARR

WM. J. EVERS

Directors.

ROSS NICHOLS,

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Collins): In your layoff of Mr. Davis, was that in any way caused by the fact that Mr. Davis appeared here before the National Labor Relations Board in the previous hearing that has been referred to?

Mr. Esterman: That is objected to as calling for a conclusion of the witness; calling for matter which is solely within the province of the Trial Examiner of the National Labor Relations Board to decide.

Trial Examiner Spencer: I don't have a hearing that that question is not asked. I always take the answer. Overruled. I will take the answer.

The Witness: No.

Trial Examiner Spencer: I call it a categorical denial.

Q. (By Mr. Collins): I will ask you whether or not the layoff of Mr. Davis was caused in any manner by reason of the fact he participated in the previous hearing before the National Labor Relations Board? [825]

Mr. Esterman: To which I interpose the same objection.

Trial Examiner Spencer: Of course, this witness can answer only insofar as he himself was involved in the layoff. You can't ask for somebody else.

(Testimony of Ross Nichols.)

Mr. Collins: No, no. I mean by "him," he was the one that instituted it. He can't; that is right.

Q. (By Mr. Collins): Now, may I ask you, Mr. Nichols, was such layoff caused in any way by reason of any union activity at any time?

A. No.

Mr. Esterman: To which I interpose the same objection.

Please give me a chance to object, Mr. Nichols.

Trial Examiner Spencer: Overruled.

Q. (By Mr. Collins): Now, will you answer my question? A. No.

Q. Now, as to Mr. Swope. Was his layoff caused in any manner by reason of any union activity of any kind on the part of Mr. Swope? A. No.

Mr. Esterman: To which I interpose the same objection.

Trial Examiner Spencer: Overruled.

Mr. Collins: Can't we have that objection——

Mr. Esterman: I propose to have these objections to [826] show to the questions.

Trial Examiner Spencer: Does this involve a line of inquiry along the same line as to each employee?

Mr. Collins: Yes.

Trial Examiner Spencer: You may have the objection to the line of inquiry. If you come to a question you don't want to object to, call it to my attention. You will have an objection until you call my attention to the fact you are not objecting.

Mr. Esterman: Thank you.

(Testimony of Ross Nichols.)

Q. (By Mr. Collins): Was the discharge of Swope caused in manner because he was here on an occasion or occasions in this court room during the hearing of the previous time here before the National Labor Relations Board? A. No.

Q. Was the layoff of Swope caused in any manner by reason of the fact that he assisted in preparing or making any preparations in connection with the previous hearing before the National Labor Relations Board?

A. No; nothing only the lack of work, was all.

Q. Was the layoff of Swope caused in any manner by reason of any union activities on his part?

A. No, none whatever.

Q. Now, as to Mr. Gilpin, was the layoff of Gilpin caused in any manner by reason of any union activity? [827] A. No.

Q. Was the layoff of Gilpin caused, in any manner, because he was present here in the court room before the National Labor Relations Board at the last hearing? A. No, sir.

Q. The previous hearing, I should say.

A. No. [828]

EMMETT J. SULLIVAN,

called as a witness by and on behalf of the Company, being first duly sworn, was examined and testified further as follows:

Direct Examination

Q. Now, when did you first learn about the fact that any [861] statements had been made by Davis, Gilpin or Swope in connection with war bonds?

A. That was on the night of the 28th of February.

Q. Who told you?

A. I was in the canteen at Plant No. 2.

Q. What did Mr. Johnson—did you have a conversation with Mr. Johnson about it? A. Yes.

A. Who were present?

A. A number of employees were in the canteen. I was sitting at a far corner table having a cup of coffee, and Johnson came in and sit down.

Q. Who participated in your conversation?

A. Johnson and myself only.

Q. What was said?

Mr. Esterman: May I, at this point, interpose an objection on this ground: That the conversation the witness is about to relate is not material or relevant to the conversation between the personnel manager and the foreman of the company out of the presence of any of the persons here involved, and that so far as I am concerned the best purpose it can serve is self-serving.

Mr. Colins: If I might say— [862]

(Testimony of Emmett J. Sullivan.)

Trial Examiner Spencer: The objection is overruled.

Q. (By Mr. Collins): What was said?

A. Johnson said, "Sully, I think there is something you ought to know."

I said, "Yes, what is it?"

He said, "Since these three tool room boys have been let out, several of my people have come to me and said that they were glad to see them go."

I said, "Why"?

He said, "Well, they have been going around to these employees making statements regarding the war bonds having no value and they are foolish to buy them, they won't be worth anything after the war. And there are some of them plenty sore about it."

I said, "If that is true I would like to have you get what you can in writing from these various people, so we can give it a full investigation."

He said, "O.K. I will see what I can do." And he went back to the plant, Plant 1. A few minutes later I, myself, went over to Plant 1——

Mr. Esterman: Has he finished the conversation?

Q. (By Mr. Collins): Have you finished all the conversation?

A. Yes, that is the end of the conversation as it took place in the canteen.

Mr. Esterman: I understood the question went to a [863] conversation.

Mr. Collins: All right. I will ask another question.

(Testimony of Emmett J. Sullivan.)

Q. (By Mr. Collins): Did anything transpire after that?

A. I went over to Plant 1 shortly afterward and talked with Brian for a few moments, to impress him with the necessity of his doing what I asked him to do with regard to statements that night, and to be sure, if he got any, to bring them to my office before he went to work the next day.

Q. Was there anything else said at that time?

A. That was the conversation.

Q. What did he do about the statements?

A. He immediately left the plant and went home. The next day when Brian Johnson came to work, late that afternoon, he came to my office and handed me the statements which are in evidence.

Q. Did you have any talk with him at that time?

A. Yes, he said there were several others that would not sign the statements, but their conversations to him and their information given to him was in the same respect as the information written on the statements.

Q. Did he say anything to you in connection with the feeling of any of the employees?

A. In connection with what?

Q. The feeling of the employees as expressed to him about the matter. [864]

Mr. Esterman: This is certainly objected to no matter what the answer would be. It would be the rankest kind of hearsay.

Trial Examiner Spencer: I will take the conversation. You may give us what he said to you.

(Testimony of Emmett J. Sullivan.)

The Witness: He said, "Yes, big John Szabo was ready to let him have one." And he didn't want any trouble and it was sure a good thing we nipped this thing in the bud. That is just like he said it. [865]

Cross Examination

Q. (By Trial Examiner Spencer): Mr. Sullivan, what distinction do you make between the terms "layoff" and "discharge," if any?

A. A layoff we use when the company is forced to temporarily discontinue the services of an employee. A discharge is a permanent separation. A quit is a permanent separation and the only other one we have is the leave of absence. We have those four.

Q. Now, Mr. Sullivan, it is not very clear in my mind why, if on February 28th you had no information that Swope, Gilpin or Davis was seeking reinstatement, you would get these statements about talk on bonds. Maybe you could clarify that in my mind.

A. Well, may I lay a little foundation for that in my answer?

Q. Yes.

A. I have been in charge of the war bond drives at Kinner's since I have been there. We have an enviable reputation in the selling of war bonds at Kinner's. I have the Treasury Department citation for the 100 percent cooperation in the sale of war bonds. We go to quite an expense [890] in setting up exhibits and putting on a show for the sale of

(Testimony of Emmett J. Sullivan.)

war bonds. For the Fourth War Bond we were awarded the Treasury Department Minute Man flag with the T and the star. We were successful in obtaining more than 90 percent of our employees on the payroll for deductions. And the star was for the sale of extra war bonds to every employee over and above his regular payroll deductions. I have a letter from the Treasury Department that we are very proud of. We had photostatic copies of it made and sent to every department; many of them have them framed in their offices. We are 100 percent war bond minded. So it hit me a little personally when I discovered that there was anything in the plant occurring that could be harmful to the sale of war bonds to our employees. That is the only reason that when I—it came to my attention I became concerned about it, to the extent of asking Mr. Johnson to endeavor to get written statements from those employees in question.

Trial Examiner Spencer: Do you have any further questions, Mr. Esterman?

Mr. Esterman: Yes, I do.

Cross Examination

Q. (By Mr. Esterman): In the light of your explanation of the difference between layoff and discharge, I would like to ask you, Mr. Sullivan, if it was the intention of the company, or if it was in your mind at the time that either [891] Davis, Gilpin or Swope were laid off to call them back at some future time?

(Testimony of Emmett J. Sullivan.)

A. They were eligible for rehire to the company, if and when there was work available of their classification.

Q. Was it your intention to call them back at some future time?

A. Well, they were eligible for that.

Q. Did you have that in mind at the time?

A. Well, they were eligible for that. We usually dismiss those things from our minds. The man goes to work the next day, he doesn't come back, very rarely. If he had come back and there hadn't been this thing come up in the interval he would have had full privileges that are accorded to any other employee that has been laid off and comes back and asks for reinstatement. [892]

A. C. McGRAW,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): State your name.

A. A. C. McGraw.

Q. For the record will you state your position?

A. I am business agent for Lodge 758, International Association of Machinists.

Q. That is the organization which filed the charge in this case?

A. It is.

(Testimony of A. C. McGraw.)

Q. How long have you been acting in that capacity? A. Since March of 1943.

Q. Let me understand you. Since March of last year you have been business agent?

A. Since 1943.

Q. Of Lodge 758?

A. Of Lodge 758; that is correct.

Q. Calling your attention to the month of February, 1944, did you, in your capacity as business agent and in connection with your efforts to organize the Kinner plant, have issued or cause to be issued any union literature? [904]

A. Yes, we did.

Q. I will show you a document which has been identified and marked for identification as Board's Exhibit 15, and ask you if you had this document in mind when you spoke of union literature (indicating)?

A. Yes, this was distributed on February 9th at the change of shifts in the afternoon.

Q. By whom, please?

A. By myself and Brother Ickes, our Grand Lodge representative.

Q. At Kinner Motors' plants?

A. That is right, at the gate between the personnel office and the clock house.

Q. Did you distribute them at more than one time that day?

A. No, between shifts, one shift came off and another shift went on. We had approximately an hour and we caught both shifts.

(Testimony of A. C. McGraw.)

Q. Whom, in your organization, determined how many of these should be—are they mimeographed?

A. Yes, they are mimeographed.

Q. I will ask you did you decide on how many to be mimeographed?

A. Yes, we did. We mimeographed one ream, which is approximately 500, and we distributed approximately 300.

Q. When you say “we,” you mean yourself and Mr. Ickes? [905]

A. That is correct.

Q. Mr. Ickes is an official of the union?

A. He is, Grand Lodge representative.

Trial Examiner Spencer: You distributed approximately 300 where?

The Witness: At the gate between the personnel office and the clock house.

Trial Examiner Spencer: Of Kinner Motors Company?

The Witness: Yes. [906]

JAMES MACON DAVIS,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

Trial Examiner Spencer: You have previously been sworn and you are still testifying under oath.

Q. (By Mr. Esterman): You were present, were

(Testimony of James Macon Davis.)

you not, Mr. Davis, when Vera Allen testified in this hearing? A. Yes, sir.

Q. Do you recall her testimony with reference to soliciting you for the purchase of war bonds?

A. Yes, sir.

Q. So that the record may be clear, was there more than one time when she solicited you for war bonds? A. No, sir; one time.

Q. With respect to that one time, can you indicate approximately when it was or in connection with what drive?

A. It was, I believe, the fourth war bond drive. I wouldn't be positive about it. It was somewhere around December or January.

Q. You mean December of 1943 or January of 1944. A. Something in that neighborhood.

Q. Did you have a conversation with her in which, at least in part, she asked you to buy war bonds at that time? [907] A. Yes, sir.

Q. Will you relate the conversation?

A. I was walking in front of the tool crib, which is located in the center of the building, and I met Miss Allen coming up the aisle. She asked me if I would buy extra war bonds in that drive.

Q. Go ahead, tell us the whole conversation.

A. And I told her that I didn't feel like I was able to add to what I was already buying at the time.

She says, "Have you been buying more than you bought at Kinner?"

(Testimony of James Macon Davis.)

I said, "I am going to buy more." My son was run a short time ago by an automobile and received compensation from the insurance company, which he wanted to spend for stamps or bonds.

She said, "Why not buy them from Kinner?"

I said I didn't want to rob him of the opportunity of buying them from his school. He was in kindergarten.

Q. Have you related all of that part of the conversation which bore on the discussion of your son's money? Was there anything said between you and Miss Allen about a penny bank?

A. No, sir; nothing.

Q. Did you tell her they wouldn't be worth a weren't worth a nickel? A. I did not. [908]

Q. Did you tell her they wouldn't be worth a nickel? A. I did not.

Q. Did you ever tell anyone at the Kinner plant that war bonds wouldn't be any good after the war?

A. I told Mr. Dayhoff at one time that I didn't know whether they would be any good after the war or not, since the war bonds in the first war were not redeemed at full price and this was a much bigger debt at this time than it was before.

Q. Was that during the course of a discussion with Mr. Dayhoff? A. That was.

Q. Were there other things said during that conversation?

A. Yes, I believe there was, the discussion of the value of price of gold.

(Testimony of James Macon Davis.)

Q. Mr. Dayhoff came to you or did you go to him, if you know, at that time? Did he approach you or did you approach him?

A. He was standing close to the tool crib at his machine, and I was passing on the way to the men's room. I very seldom passed without saying something or speaking to Mr. Dayhoff.

Q. You talked to him many times?

A. Many times.

Q. Are you personally acquainted with Mr. Gerth, who testified in this case? [909]

A. Yes, sir.

Q. How long have you known him?

A. I have known Mr. Gerth, I believe, ever since I have been on the night shift, or I will say I have known him for a year, at least.

Q. Did you ever have any discussions with Mr. Gerth on the subject of unions? A. Yes, sir.

Q. More than one?

A. Well, I recall one in particular. [910]

Q. (By Mr. Esterman): I started to ask you when you had this conversation with Mr. Gerth about unions. A. It was some time in January.

Q. 1944?

A. I would say the latter part of January, 1944, or the first of February.

Q. Was anyone else present? A. No.

Q. Was this in the Kinner plant?

A. Yes, sir.

Q. What was said by you or him, if anything, on the subject of unions at that time?

(Testimony of James Macon Davis.)

A. I was passing his machine, which is right near the aisle, and I said, "Mr. Gerth, it looks like we are getting along pretty good in our drive for union membership. We might be represented by the A. F. of L. before long."

Mr. Gerth says, "I don't agree with you." He says, "Knowing the company executives as I do, they will close the plant before they will allow any such union in this building." [911]

Q. (By Mr. Esterman): Calling your attention to the date Mr. Gerth testified in this hearing, did he stop and speak to you after he left the stand?

A. Yes?

Q. What did he say to you?

Mr. Collins: I object to that as incompetent, irrelevant and immaterial; not proper rebuttal.

Trial Examiner Spencer: The objection is overruled.

The Witness: On his way from the stand back to the back of the room he stopped and touched me on the shoulder and said, "Jim, I am sorry I had to do this to you."

Q. (By Mr. Esterman): Is that all that was stated at that time? [913]

A. Yes, sir.

Q. Did you say anything?

A. I did not.

[914]

(Testimony of Richard Arthur Swope.)

(The record was read.)

Mr. Collins: I will withdraw my objection.

Trial Examiner Spencer: Proceed.

The Witness: Later, during the third war loan drive, the period which Mr. Szabo referred to in his testimony——

Q. (By Mr. Esterman): Keep your voice up.

Mr. Collins: I can't hear you.

The Witness: And again during the third war loan drive, [919] which is the time that Mr. Szabo was referring to during his testimony.

Q. (By Mr. Esterman): Well, so we will fix the time, do you recall when it was you were solicited by Mr. Johnson in connection with the third war loan drive?

A. I don't recall the time. It was during the third war loan drive and he asked me if I would increase my deduction at the time.

Q. I was about to ask you, first, if you are going to tell us about some conversations. Let me ask you some question first, please. A. All right.

Q. Were you solicited in connection with the third war loan drive by Mr Johnson, in the plant?

A. Yes, I was.

Q. In the tool room?

A. No, I wasn't working in the tool room at the time.

Q. You were in the tool room?

A. I was not working.

Q. Where were you working?

(Testimony of Richard Arthur Swope.)

A. I was working, as I remember, right across the aisle on the radial drill. I believe Mr. Szabo was workin on a milling machine at the time.

Q. Did you and Mr. Johnson then engage in a conversation about war bonds? [920]

A. Yes, we did.

Q. Was anyone present or within earshot?

A. Only Mr. Szabo, who was working near us.

Q. Tell us what the conversation was.

A. He asked me if I wouldn't increase my deduction. I told him I didn't know at the time whether I could, but I would take a blank.

Q. Tell us the conversation.

A. And if I could I would certainly do it.

Q. What did he say, if anything?

A. He was in a hurry and left. He didn't say anything more.

Q. Did you take a blank from him?

A. Yes.

Q. Did you fill it in?

A. Later than evening some of the other employees and I talked about it, and agreed that it would be very little to increase, so I increased my deductions from \$6.50 a pay day to \$10.00.

Q. Is that each week?

A. Each pay day; semi-monthly.

Q. There are two pay days a month?

A. That is right.

Q. Did you then notify the management you were having your deductions increased? [921]

A. I filled the form out and handed it to Mr. Johnson later that week.

LEWIS GILPIN,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

Trial Examiner Spencer: Mr. Gilpin, you are still testifying under oath. Do you understand that?

The Witness: Yes.

Q. (By Mr. Esterman): Were you here the day Mr. Szabo testified? A. I was.

Q. Were you acquainted with him during the time you were at Kinner's?

A. Just partially.

Q. Well, you had better explain what you mean by that. I don't know if I understand.

A. I knew him, and that is all.

Q. You knew who he was?

A. Yes, that is all. [922]

Q. Did you ever have any conversations with him about war bonds?

A. Not as I know of, no.

Q. Or did you ever have any conversations with him at the plant? A. No.

Q. Did you ever talk to him about blood donations? A. No.

Q. Did you ever tell anyone at the Kinner Motors, Inc., that the Red Cross sold the blood which was donated to it? A. No.

Mr. Esterman: That is all.

Mr. Collins: That is all.

(Testimony of Lewis Gilpin.)

Trial Examiner Spencer: The witness is excused.

(Witness excused.) [923]

[Endorsed]: No. 10984. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Kinner Motors, Inc., Respondent. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed February 12, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

